









# PRECEDENTS OF PROCEEDINGS

IN THE

HOUSE OF COMMONS.



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- I. *Aliens, and Persons naturalized.*
  - II. *Minors.*
  - III. *Clergy.*
  - IV. *Peers apparent of Peers.*
  - V. *Ambassadors or Foreign Ministers.*
  - VI. *Attorney General and Attendants on the House of Lords.*
  - VII. *Sheriffs, Returning Officers.*
  - VIII. *Sick.*
  - IX. *Outlaws and in Execution.*
  - X. *Accepting Offices.*
  - XI. *Whether eligible.*
  - XII. *Whether they can relinquish.*

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M E M B E R S.

## I. *Aliens, and Persons naturalized.*

1. **O**N the 6th of December, 1606, motion made, That it might be entered for a general order, that no person naturalized should be capable of a seat in Parliament.

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2. On

2. On the 23d of May, 1614, a Committee is appointed to consider of a motion of Sir Robert Phelips, "That persons naturalized may not be Members of the House of Commons."

3. On the 7th of February, 1620, a doubt is conceived, whether \* Lord Falkland, a Peer of Scotland, was eligible; but no decision upon it.

4. On the 1st of November, 1621, Sir Joseph Vaughan, being made a Viscount of Ireland, a question arose † "Whether he could sit here."

5. On the 10th of March, 1623, a question arose on the eligibility of Mr. William Stewart, a Scotchman, and now naturalized; and on the 28th of May following, it is resolved, That the election of Mr. Stewart, being no natural-born subject, is void; and a warrant to go, for a new writ for Monmouth ‡.

6. On the 18th of February, 1625, a new writ issued in the room of a Scotchman 'ante-natus,' and not naturalized.

\* Sir Henry Carey, Knight, being chosen one of the Knights for Hertfordshire, was afterwards created Viscount Falkland, of Scotland; the question grew, Whether, being a Nobleman of another kingdom, he could sit here in the Lower House of Parliament or no; for in the Upper House he cannot, being no Baron of this kingdom.—This was referred to a Committee; because, if he might serve here, the House might hereafter be filled altogether, or for the most part, with the Nobility of Scotland and Ireland.—But herein was no further order made at all.—See Proceedings and debates in Parliament in 1620

and 1621, vol. I. p. 20.

† See Sir Edward Coke's opinion upon this question in the second volume of Proceedings and Debates in Parliament, 1620 and 1621, p. 182. "Sir Joseph Vaughan here is but a titular Baron, to be tried not by his Peers, but by an ordinary Jury. He is a worthy gentleman, and may serve here as a private man; for there are here titular Lords, who serve amongst us as well as he."

‡ See this case reported at length in Glanville's Reports of Election Cases, N<sup>o</sup> 18. p. 120. with the reasons upon which this determination was made.

## O B S E R V A T I O N S.

The great number of Scots \* that came into this country, on the accession of James the First, and who applied, as appears from the Journals, to be naturalized by Act of Parliament, raised a jealousy in the minds of the Members of the House of Commons, and made them wish to restrain them, as foreigners, from being eligible into the English Parliament †. But, though several hints

of

\* James the First was attended by great numbers of Scots in his coming into England, who were advanced to great honours, and shared largely in his bounty, at the expence, and much to the regret, of the English nation. —Harris's Life of James I. p. 53.

“ present him with this petition, signed by  
“ the Earls of Huntingdon, Oxford, and  
“ thirty-one other Peers.”

The humble petition of the Nobility of  
England,

† The Lords have, at several periods, expressed a similar jealousy, That the privileges and honours due to them, as Peers of the realm, should not be communicated to Irish Peers, or (before the Union) to those of Scotland. In Wilson's Life of James I. published by Kennet, Vol. II. p. 747, it is said, “ About this time, the latter end of the  
“ year 1621, the Lords began to consider  
“ how cheap they were made by the multitude of Irish and Scotch Earls and Viscounts the King had made, not the natives  
“ of those kingdoms, but private English gentlemen, who had procured and assumed  
“ those titles, to perch above the English Barony, to their great regret and dishonour. And after some debate and canvassing it, they resolved, “ That though  
“ they could not debar the King from making such swarms of Nobles, with outlandish  
“ titles, yet they would let him know, what  
“ prejudice it was to them, and if it produced  
“ no other good effect, the King might at least see, they took offence, and were not  
“ well pleased with it; which made them

“ That whereas your Majesty, at the opportunity of some natural subjects of this realm of England, hath been pleased to confer upon them, honours, titles, and dignities, peculiar to other your Majesty's dominions, by which all the Nobility of this realm, either in themselves, their children, or both, find they are prejudiced: Our humble desire is, that, with your gracious allowance, we may challenge and preserve our birthrights; and that we may take no more notice of these Titulars, to our prejudice, than the law of this land doth; but that we may be excused, if in civil courtesy we give them not the respect or place as to Noblemen strangers; seeing, that these being our countrymen, born and inheritanced under our laws, their families and abode among us, have yet procured translations into foreign names, only to our injury. But in this address to your Sacred Majesty, it is far from us to meddle with, much less to limit or interpret the power of your Sovereignty; knowing that your Majesty (being the root whence all honour receives sap, under what title soever)

of this sort were at that time, and at many subsequent periods, frequently thrown out, no law to this purport ever passed, till, from a similar

may collate what you please, upon whom, when, and how you please. Wherefore, in all humbleness, we present this to your gracious view, confident of your Majesty's equal favour herein."—In the year 1667, the Lords, on the 22d October, refer to their Committee of Privileges the consideration of Foreign Nobility; and the Committee are to report the whole proceedings which they can find in the Journals, or any other records. On the 5th of December the Earl of Bolingbroke reports, "That the Committee for Privileges have taken into their consideration the matter of complaint concerning the Foreign Nobility; and have perused former precedents concerning this business; and upon serious thoughts thereof, their Lordships do conceive the statute 31 Henry VIII. ch. 10. to be the fundamental rule for direction of precedency in all other places within the realm, as concerning the Peers of England; and for these reasons:

"1. Because in the said statute there is no mention made of any Foreign Nobility, but only of the Peers of this realm of England.

"2. The said statute is in force, not only to meetings in Parliament, but also in the Star Chamber, and in all other Assemblies and Conferences in Council.

"3. Because though the civility of precedency hath been in courtesy permitted by the Peers of England to the Foreign Nobility, when they have come to attend on his Majesty here, by way of dutiful repair for a short time; yet when they have *Domicilium* here, it is not fit it should be granted unto them, lest the courtesy do become a custom.

"4. His Majesty, by his letters patent, giving precedency only to such persons so

"created to the degree of Peers in those kingdoms, from whence they derive their titles, it must needs be looked upon as a deviation from the law, and an high dishonour and derogation to his Majesty's letters patent, and the Nobility of this kingdom, that they should not enjoy those privileges and pre-eminences contained in them, and so highly asserted and grounded upon the law of the land.

"5. More particularly the right of precedency doth concern the Peers of this House (England being the seat of the English empire) and without whose assent no laws can be made in this realm.

"6. This settlement of precedency will accord the quarrels and disputes, which have and may happen in the execution of his Majesty's service, upon commissions and other public affairs of this kingdom.

"Lastly. This Committee do humbly offer to this House, That the Lords will be pleased to establish this assertion of the right of precedency of the Peers of England, before all Foreign Nobility, by some solemn declaration of the House of Peers."

After a serious debate and consideration, the House agreed with the Committee in this report, *Nem. con.* and refer it to the said Committee to draw up a declaration to the same purport as is mentioned in the report, and to offer the same to this House; and also an address to his Majesty thereupon. On the 11th of February following, the Committee of Privileges report, "That they find, that Barons of other kingdoms do wear coronets with six pearls behind their coaches, which none ought to do, but English Barons." The Lords thereupon address the King, upon the 4th of March, complaining, "That the Nobility of

similar jealousy, on the approach of a similar event, viz. “ the accession of a foreign Prince to the throne of these kingdoms,” it was provided by the 12th and 13th William III. ch. 2. commonly called the Act of Succession, “ That, after the accession of the House of Hanover, no person born out of the King’s dominions, except of English parents (although he be naturalized) \* should  
“ be

“ of Scotland and Ireland take place in this kingdom, according to their titles, without any regard to the precedency due to the Peerage of this realm, to the great disparagement and injury of the English Nobility.” They then state several reasons, upon which they support this complaint; and desire the King to establish some rule, for regulating this matter for the future. The King’s answer, reported on the 9th of March, is, “ That it is a business of *very great consequence*, and that he would take it into his *serious* consideration.” Some years after, the Peers, finding nothing done by the King, make an order, on the 4th of April, 1671, “ That, at the funeral of the Duchess of York, which is to be to-morrow, the Peers of this realm shall meet in this House, and go in a body by themselves — and that Garter King at Arms have notice thereof, to the end that he may take care, that *no Foreign Nobility* shall interpose.”

On the 27th of March, 1673, it is ordered, “ That in regard there are some persons named as Commissioners in the Bill of Supply, who are of *Foreign Nobility*, and their titles are not expressed, an entry be made in the Journal-book of this House, that they may not prejudice the Nobility of England.”

On the 9th of March, 1676, notice being taken of persons, not being Peers of this realm, using coronets, titles, or other ensigns, proper to the Peers only; the Lords

order “ That it be referred to the Earl Marshal of England, to examine into these facts; viz. Who those persons are who so assume coronets, titles, and ensigns *belonging to Peers* only; and by what authority, the Barons of Scotland and Ireland do wear and use coronets.”

\* The Commons, in a Bill for settling a revenue on Prince George of Denmark, inserted a clause to declare, “ That in case he should survive the Queen, he should be capable to be of the Privy Council, and a Member of the House of Peers, and might enjoy any Office, civil or military, notwithstanding this Clause in the Act of Succession.” The Lords considering this provision as a tack to a Money Bill; passed a *General Bill*, which declared, “ That it was not the intent or meaning of the said Act of the 12th and 13th William III. that it should extend to disable or incapacitate *any person* (born out of the King’s dominions, who at or before the making the said Act was naturalized, or made a denizen, and created a Peer of the realm), to be of the Privy Council, or a Member of the House of Peers, or to enjoy any office of trust, civil or military.” But as soon as this Bill from the Lords was read a first time, on the 15th of January, 1702; in the House of Commons, it was rejected; without a division. On the 19th of January the Lords debated the clause, relating to the Prince of Denmark, and it was attempted to be thrown out. See Bishop Burnet’s ac-

“ be capable of being a Member of either House of Parliament.” And this law was enforced by the 1st George I. stat. 2. ch. 4. which enacts, “ That no bill for naturalization shall be exhibited “ without such a prohibitory clause;” and this is the law at present. It has however been customary, in the case of foreign Princes marrying into the Royal Family (as the Prince of Orange and Prince of Brunswick) to repeal this clause by a previous Act \*, and then to pass the Act for naturalization without any restriction; so that these Princes become immediately Englishmen, to all intents and purposes, and capable of sitting in Parliament †. By the 7th Jac. I. ch. 2. all persons applying to be naturalized, are to take the oaths of allegiance and supremacy, before the Bill is read a second time; and accordingly the custom is, for the person applying for the Bill in the House of Commons, to come to the table, after prayers, but ‡ before the Speaker takes the chair, and there to take these oaths, administered to him by the Clerk, and this between the first and

count of this transaction, and of the motives which induced the two Houses to agree to this clause, Burnet's History, Vol. II. p. 338. —Prince George of Denmark had been naturalized, and created Duke of Cumberland, in 1689. A declaratory Act however passed in the 1st George I. statute 2. ch. 4, “ That “ the provisions in the 12th and 13th of “ William III. should not be construed to “ extend to disqualify any person who had “ been naturalized before the accession of “ George I.”

\* By the statute of the 4th George III. ch. 4, the clause in the Act of the 7th James I. ch. 2, whereby every person to be naturalized is required to have received the sacrament within a limited time; and also the oaths of allegiance and supremacy; and the provisions in the 1st George I. stat. 2. ch. 4. requiring a clause to be inserted in a naturalization Act for prohibiting the person so

naturalized to be of the Privy Council, &c. are repealed with regard to the Hereditary Prince of Brunswick. And in the Act for naturalizing that Prince, ch. 5. these limitations are omitted, and he is declared to be taken and esteemed to be a natural-born subject of this kingdom, to all intents and purposes whatsoever.

† See the Statutes of 13th George II. ch. 7; and the 22d of George II. ch. 45, and the 2d of George III. ch. 25. relating to the naturalization of foreigners serving in America, and employed in the whale fisheries.

‡ Though this has been the custom of late years, it seems, by an entry in the Journal of the 2d of May, 1668, that it was otherwise formerly; for there it is ordered, “ That when any person comes to be naturalized hereafter, they do first take the “ oath of allegiance and supremacy in the “ House

and second reading of the Bill. This condition of taking the oaths is also always repealed by the previous Acts, in the case of the Princes above-mentioned.—By the Act 4th Queen Anne, ch. 4. the issue of the body of the Princess Sophia, and all persons lineally descending from her, born or “hereafter to be born,” are declared to be, and shall be, to all intents and purposes, deemed natural-born subjects of this kingdom. It should seem as if, by this law \*, all the descendants of that Princess (which description would include

“ House, after the Speaker takes the Chair, according to ancient form.”—By the statute of the 7th Jac. I. ch. 2. no form is prescribed, “but that the oaths shall be taken in the Parliament House, and ministered by the Chancellor or Speaker, during the session.”—See, the 4th of April, 1689, the manner of the Counts Schomberg, and Mr. Bentinck’s taking these oaths.

\* In a letter from Lord Somers to the Elector of Hanover, dated the 12th of April, 1706, and published in Macpherson’s State Papers, p. 33. Vol. II. is the following paragraph:

“ Having already presumed to take so great a liberty, I humbly beg permission of your E. H. to mention another particular, *the Act of Naturalization*, which some have said was at least unnecessary, if not a diminution to your most Serene family. If this be so, not only all our present Judges, but all the Lawyers of former ages, have been in the wrong.

“ There are but two ways of making any persons, born out of the allegiance of the Crown of England, capable of enjoying inheritances, honours, or offices in this kingdom; the one complete and perfect, which is a naturalization by Act of Parliament; the other imperfect, which is by Letters Patent of denization. That this is so, cannot be better proved, than by

“ the instance of his Highness Prince Rupert. For when King Charles the First intended to create him Duke of Cumberland; to make him capable of that title, it was found necessary previously to make him a denizen, by the King’s grant, under the Great Seal; the differences then subsisting between the King and his Parliament, making it impossible to procure an Act of Naturalization. But the present Act is attended with all possible marks of honour and respect, from the Queen and Nation. *It extends to all the posterity of her Royal Highness the Princess Sophia, born or hereafter to be born, and wheresoever they are born*; which is a privilege that was never yet granted in any case, till in this instance. I am, with the most profound respect, &c. &c.

“ SOMERS.”

Accordingly, no Bill was passed for naturalizing the Princess of Wales in 1795, or the Princess of Prussia, when married to the Duke of York, as, upon consideration of the Act of the 4th of Queen Anne, ch. 4. it was found to be unnecessary. It should seem, as if the Princess Sophia, very early after the Revolution, began to entertain expectations of her or her issue succeeding to the crown of England. In a debate upon the Bill for declaring the rights and liberties of the subject,



clude the House's of Prussia, Denmark, and Orange) are natural-born subjects of this realm \*.

ject, and settling the succession of the Crown,' on the 8th of May, 1689, Col. Herbert says, "I have seen a letter from a sister of Prince Rupert's, wherein she complains of great hardship done her children, that they were not regarded in the entail of the Crown." When this Bill went up to the Lords, they inserted the name of the Princess Sophia in the succession by way of amendment. To this amendment the Commons disagreed; and from this circumstance, both Houses adhering, the Bill was lost for this session. Grey's Debates, Vol. IX. p. 239 and 345.—Bishop Burnet says, "The King ordered me to propose the naming the Duchess of Hanover and her posterity in the succession. The Lords agreed to the proposition without any opposition; but when it was sent to the House of Commons, Wildman and all the Republican party opposed it. Their secret reason seemed to be a design to extinguish Monarchy." History of his Times, Vol. II. p. 15.

\* On the 2d of May, 1765, two questions are put to the Judges, in the House of

Lords: 1. "Whether an Alien, married to a King of Great Britain, is, by operation of the Common Law, naturalized to all intents and purposes?"

2. "Whether, if she be so naturalized by the Common Law, such person would be disabled by the Act of 12th William III. intituled, "An Act for the further limitation of the Crown, and better securing the rights and liberties of the subject," or by any other Act, from holding and enjoying any office or place of trust, or from having any grant of lands, tenements, or hereditaments from the Crown?" To which questions, on the 3d of May, the Lord Chief Justice of the Common Pleas delivers this unanimous opinion of the Judges. —"We are all clearly of opinion, That an Alien, married to a King of Great Britain, is, by operation of the Law of the Crown (which is a part of the Common Law) to be deemed a Natural-born Subject, from the time of such marriage; so as not to be disabled by the Act of the 12th William III. or by any other Act, from holding and enjoying any office, &c."

## M E M B E R S.

II. *Minors.*

1. **O**N the 28th of November, 1621, in a Bill \* relating to the election of Members, it was proposed to insert a clause, "that they shall be 21 years of age."

2. On the 10th of March, 1623, Sir Edward Coke says, "Many under the age of 21 years fit here by connivance; but if questioned, would be put out."

3. On the 16th of December, 1690, on the hearing of a controverted Election, the petitioner, Mr. Trenchard, is admitted by his Counsel to be a Minor, but notwithstanding, upon a question and division, is declared to be duly elected.

## O B S E R V A T I O N S.

Notwithstanding the opinion of Sir Edward Coke, as to the law, and which seems to be adopted by Mr. Justice Blackstone, in his Commentaries, Vol. I. p. 162, it is certain that the practice was

\* On the debate on this clause, when proposed, Mr. Weston says, "For it is not fit that *they* should make laws for the kingdom, who are not liable to the law."

—Parliamentary Debates in 1626, Vol. II. p. 227.

It appears that Sir Edward Coke was present at this debate.

different \*. Mr. Waller †, among others, sat in Parliament before he was 17 years of age ‡. This question is now however finally settled, by the 7th and 8th of William III. ch. 25, which makes void the election of any person who is not 21 years of age.

\* In the Appendix to Welwood's *Memoirs*, N<sup>o</sup> 1, there is an extract from Naunton's *Fragmenta Regalia*, in which is the following passage: "This reminds me of Recorder Martin's speech, about the tenth of our late Sovereign Lord King James, when there were accounts taken of forty gentlemen not above 20 years of age, and some not exceeding 16: Which moved him to say, That it was the antient custom for old men to make laws for young ones; but that then he saw the case altered, and that there were children elected into the great council of the kingdom, who came to invade and invert nature, and to enact laws to govern their fathers."

† See his speech in Grey's *Debates*, Vol. I. p. 355. in which he says, "That he was but sixteen when he sat first; and sometimes it has been thought fit, that young men may be early in councils, that they may be alive, when others are dead." See Mr. Waller's life in the *Biographia Britannica*. It is said in Grey's *Debates*, Vol. I. p. 41. that Lord Torrington, son of the Duke of Albemarle, was but fourteen years of age, at the time he took part in a debate, as a Member of the House of Commons.

‡ On the 21st of October, 1667, a Writ of Summons was issued to the Earl of Mulgrave, he being under age. On which the Lords addressed the King, "That his Majesty would be pleased to be sparing of writs of this nature for the future;" and the matter was referred to the Committee of Privileges. His Majesty returns an answer on the 29th of October, "That he did not know, that the Earl of Mulgrave was much under age, but having granted him his writ, he desires he may be admitted

"to sit in Parliament. And that his Majesty will be careful to prevent the like inconveniencies for the future." On the 31st of October, the Lords, by the recommendation of the Committee of Privileges, refer these two questions to the Judges: (1.) Whether a Minor may sit in quality of a Judge in any Court of Justice, by the law of England, and give judgment? (2.) Whether a judgment may by law be excepted against by Writ of Error or otherwise, wherein any one, that sat as a Judge and gave his judgment, was a Minor? To the first of these questions, the Lord Chief Justice reported, on the 6th of November, that it was the unanimous opinion of all the Judges, "That by the law of England, in the ordinary Courts of Justice, no Minor can sit, or give any judgment as a Judge." On the 14th of December, the House order the Committee of Privileges to prepare "a Declaration," respecting both the time past and time to come, which may prevent the inconvenience of Minors sitting in this House. Which Declaration is reported on the 18th of December, "That, according to the law of the realm, and the antient constitution of Parliament, Minors ought not to sit nor vote in Parliament;" to which the House agree. The Committee then recommend, "That a declaratory Bill be prepared to remedy this inconvenience for the future, without any retrospect, and to confirm all that hath already past." The House order that this second part of the Report be laid aside. It appears from the account of Lord Mulgrave's Life, in The *Biographia Britannica*, under Title "Shelfield," that he was born in 1649.

On the 22d of May, 1685, it is ordered,  
“ That no Lord, under the age of one and  
“ twenty years, shall be permitted to sit in  
“ the House.” This is added to the Stand-  
ing Orders of the House of Lords; and it is  
only by virtue of this order, that Minors are  
excluded from sitting as Peers of Great  
Britain, when they come to their honours  
by creation or descent. Those who are

electd of the Sixteen Peers to represent  
Scotland, must, by an Act passed by the Par-  
liament of Scotland, for settling the man-  
ner of electing the Sixteen Peers, (and  
which is inserted in the Act of Union, 5th  
Anne, ch. 8, in the 25th Article, sect. 12)  
be 21 years of age compleat. But there is  
no Act of Parliament upon this subject, re-  
specting ether Peers,

## M E M B E R S.

III. *Clergy.*

1. **I**N the third volume of the Parliamentary History, p. 274, is a discussion of the question, “ Of the right which the inferior Clergy have, by their Representatives, to sit and vote in all questions in the House of Commons.”

2. On the 12th and 13th of October, 1553, Dr. Nowell being elected a Burgess for Loo, this question is referred to a Committee; who report, “ That he, \* being a Prebendary of Westminster, and thereby having a voice in the Convocation House, cannot be a Member of this House.” This is agreed to by the House, and a new writ is issued in his room.

3. On the 7th of February, 1620, the Committee of Elections are unanimously of opinion, against a Clerk returned for Morpeth, “ because he had or might have a voice in the Convocation House,” and would have fined the Town, but for its poverty; and on the

\* Carte, in his third volume of the History of England, p. 295, says, “ Whether Dr. Nowell was the Chapter’s representative in this Assembly (the Convocation) or whether it was owing to his affection for the Reformation, a difference was made between him and Dr. Tregonwell, who being likewise a Prebendary of the same church, continued to sit, as Sir Thomas Haxey, and other Clergymen, had formerly done, in the House of Commons.” This Thomas Haxey, Clerk, appears, from the Parliamentary History, Vol.

I. p. 457, and Vol. II. p. 53, to have been a Member of the House of Commons in 1397, in the 20th year of Richard II.—See the printed Rolls of Parliament, Vol. III. p. 339 and 341, in which is a very curious proceeding touching this Thomas Haxey, for exhibiting a bill in Parliament, “ complaining of the excessive charges of the King’s household, and of the great number of bishops, and ladies, who frequented the Court at the King’s expence.” See also Rot. Parl. Vol. III. p. 430. N° 90.

8th of February, the House resolved his return to be void, and a new writ to issue for a new election \*.

4. On the 9th of January, 1661, it is referred to the Committee of Elections, to examine, whether Sir Joseph Craddock be in holy orders, and so disabled to sit as a Member of this House; on the 17th of January, they report, That it appeared to them, that Dr. Craddock was in holy orders, and that it was their opinion, that he was incapable of being elected a Burgess: to which resolution the House agree, and declare his election void.

## OBSERVATIONS.

Mr. Justice Blackstone, in the first volume of his Commentaries, p. 175, is of opinion with Sir Edward Coke, that the Clergy are, by law, incapable of sitting in the House of Commons †. Mr. Finch,

\* Since the former publication of this Volume, the following extract from a manuscript of Petyt's, in the Inner Temple library, has been communicated to me by a friend. It is in a Book, intitled,

" Journal or Diarie of the most material passages in the Lower House of the Parliament, summoned to be holden the 16th day of January, A. D. 1620, but by prorogation adjourned till the 23d, and then again to the 30th of the same month."

In the 13th volume of that Collection, p. 90, is the copy of the Speaker's warrant for a new Writ for Morpeth, " for a new election in the room of John Robson, Clerk, returned for Morpeth;" and recites the Resolution, "That he ought not to

" be accepted to serve as a Member of this House, by reason he is a Minister, and so hath or may have a voice in the Convocation House."

† In the collection of records, in Bishop Burnet's History of the Reformation, Vol. II. pages 117 and 118, N<sup>os</sup> 16, 17, and 18, there are several petitions from the Convocation, " That the inferior Clergy may be associated with the Commons, in the Neather House of Parliament." One of the reasons, given by the Convocation in a petition to Queen Elizabeth, to induce her to adopt this measure, is, " That her Majesty shall by this, be sure of a number more in that assembly, that ever will be most ready to maintain her prerogative; and to enact, whatever may make most

Finch, in the Journal of the 11th of April, 1614, says, "None are excepted but Sheriffs, \* in orders, and Judges." And Sir Edward Coke, on the 8th of February, 1620, says, that when he was Speaker one was put out; and that he saw \* Alexander Nowell put out, because of the Convocation House. I do not know that this question has been agitated in the House of Commons since the instance of Dr. Craddock, in 1661, at which time the Clergy † taxed themselves by a subsidy, which was afterwards confirmed and carried into execution by Act of Parliament. The first

"most for her Highness safety and contentment; as the men, that next under God's goodness, do most depend upon her princely clemency and protection."

\* Here must be some mistake, as Sir Edward Coke was born in 1550, and the case of Dr. Nowell happened in 1553.

† Carte, in Vol. II. of his History of England, p. 557, giving an account of the taxes raised in the year 1381, says, "The Commons offered to raise 100,000 marks, if the Clergy, who possessed a third part of the realm, would raise 50,000 more; but these last, insisting that their grant had never been, nor ought to be, made in Parliament, and claiming the liberty which the Church had always hitherto enjoyed, desired that the Commons might do what they ought; and as for themselves, they would, in the present necessity, do as they had been formerly accustomed. The Lords and Commons agreed at last, to lay three groats upon every person of the realm, of what estate and condition soever (*not excepting either the Secular or Regular Clergy, the Nuns, or the servants of the King's household*)"—It appears from the Rolls of Parliament of this year (Vol. III. of the printed Rolls, p. 90.) that the latter part of what Carte says is a

mistake, for the grant which is entered there is strictly confined to *Lay Persons*.—The cause of this error will be very obvious to any person, who reads the grant with attention.—Mr. Hakewill has fallen into the same mistake, in his argument upon the case of impositions in the Exchequer, which is printed in Vol. XI. of the State Trials, p. 36.—Sir Robert Cotton, in his Abridgment of the Records, p. 189, states this matter correctly.—But in the year 1431, the 9th Henry VI. the Commons, granting to the King 20 shillings from every person holding land by a whole Knight's fee, include the lands belonging to the Clergy, which had been purchased since the 20th year of Edward I. 1292. See Rol. Parl. Vol. IV. p. 369.—So in the year 1449, the Commons grant a subsidy of six-pence from every person having a freehold of the yearly value of 20 shillings; and that the grant of the said subsidy extended to charge as well all *persons spiritual* as temporal, any exemptions, privileges, immunities, liberties, franchises, or grants, had or used, to the contrary notwithstanding. Rolls. Parl. Vol. V. p. 172.

This charge however upon the Clergy is confined, as in the former grant, to lands purchased or amortised since the twentieth year of

first Assessment Bill, in which the Clergy were included with the rest of the people, was in January, 1664 \*. Bishop Burnet says, in the first volume of the History of his Own Times, p. 197, " That the four subsidies given by the Clergy, in 1663, were the  
 " last aid that the Spirituality gave; and this proving so inconfi-  
 " derable, yet so unequally heavy on the Clergy, it was resolved †  
 " on hereafter, to tax church benefices with temporal estates."

Whatever

of Edward I.; that is, to lands procured by the Clergy subsequent to passing the statute *Quia emptores terrarum*, by which, 18 Edward I. stat. 1. ch. 3, "lands or tenements sold shall in no wise come into Mortmain, either in part or in whole, contrary to the stat. 7. Edward I." Indeed it appears that constantly, when it was necessary to impose a tax upon the land, the lands holden by the Clergy, and which had been purchased or amortised since the period of the twentieth year of Edward I. were always included.—See Rolls Parl. Vol. II. p. 163. 304. Vol. III. p. 24. N° 102, which see at length.

\* On the 16th of December, 1664, The House agree with the Committee, " That all  
 " lands extraparochial, and other lands not  
 " hitherto taxed, shall be taxed in this Act;" and on the 31st of January, 1664, in the further proceeding on the same bill of Supply, a proviso is offered and agreed to, on the behalf of the Clergy, " For discharging of  
 " such estates as shall be now assessed, belonging to the Clergy, of the two last subsidies, formerly by them given." The Bill passed the House of Commons on the 3d of February, 1664. On the 24th of November, 1666, it is resolved, " That the Clergy be  
 " rated in the Poll Bill, for their titles and dignities."

† This was first settled by a verbal agreement between Archbishop Sheldon and the Lord Chancellor Clarendon, and tacitly given into by the Clergy in general, as a great ease to them in taxations. The first public Act of any kind, relating to it, was an Act of Parliament passed in 1664-5, by which the Clergy, in common with the Laity, were charged with a tax given in that Act, and were discharged from the payment of the subsidies, which they had granted before in Convocation; but in this Act of Parliament there is an express saving of the right of the Clergy to tax themselves in Convocation, if they think fit: but that has never been done since, nor attempted, as I know of; and the Clergy have been constantly, from that time, charged with the Laity, in all public aids to the Crown, by the House of Commons.—In consequence of this, (but from what period I can't say) without the intervention of any particular law for it, except what I shall mention presently, the Clergy have assumed, and without any objection have enjoyed, the privilege of voting in the election of Members of the House of Commons, by virtue of their ecclesiastical freeholds.—This having been constantly practised, from the time it first began, there are two acts of Parliament which suppose it to be now a right. The Acts are, the statute

off



Whatever the 'law' may be, as to the right of persons in orders being eligible to be Members of the House of Commons, the 'fact' is, that several under that description have been elected and sat, though not bearing the habit or appearance of Clergymen: I myself remember Mr. Gordon, Member for Rochester, and some others. It is true, none of these elections have been disputed upon this ground.—A difference has been sometimes taken, between Persons in Priest's or in Deacon's Orders; it is said, the first is an indelible character, the other not:—But *Quære* \*?

What alteration the practice of assessing the Clergy with the Laity, which has now continued above a century; and the admission of the Clergy to vote for Knights of the Shire, by virtue of their Glebe †, which, I apprehend, commenced about the same

of 10 Anne, ch. 23, and the 18 George II. ch. 18.—Gibson, Bishop of London, used to say, that this was the greatest alteration in the Constitution ever made without an express law. Mr. O.—On the 22d of April, 1671, Sir Heneage Finch, Attorney General, (afterwards Lord Chancellor Nottingham) in a report of a conference with the Lords, on the subject of the Lords making amendments to Bills of Supply; in answer to a question asked by their Lordships, "If the Lords may deny the whole, why not a part?" gives this reply, "The Clergy have a right to tax themselves; and it is a part of the privilege of their estate. Doth the Upper Convocation House alter, what the Lower grant? Or, do the Lords or Commons ever abate any part of their gift? yet they have a power to reject the whole. But, if abatement should be made, it would insensibly

"go to a raising; and deprive the Clergy of their antient right to tax themselves."—It appears from this, that, in the year 1671, the right of the Clergy to tax themselves in Convocation, was still admitted, and considered as a circumstance that might take effect.

\* I have reason to think, from conversations that I have had, since the first publication of this Work, with several persons extremely well informed in ecclesiastical law, that there is no foundation for entertaining any doubt upon this subject; but that persons, whether in Priest's or Deacon's Orders, are, with respect to the character in which they are here considered, precisely in the same situation.

† Vide the Commons Journal, the 28th of May, 1624, Cambridge election.

period, may have made in the law of this question, must be considered whenever this matter shall come to be formally decided \*.

\* Since the former publication of this Volume, there has been a formal determination on this question, by a Committee appointed under Mr. Grenville's Act. On the 28th of January, 1785, a petition was delivered, complaining against the election of Edward Rushworth, Clerk, for Newport, as "being a Clerk in Holy Orders, and therefore incapable to be elected to serve in Parliament." The Committee, on the 24th

of February 1785, determined, "That Edward Rushworth, Esq. was duly elected." — See the report of this case, and the arguments of the counsel, in the 2d Volume of Luder's Reports, p. 269, with Mr. Luder's notes and observations. Mr. Rushworth has been frequently elected, and sat as a Member in several Parliaments; but always wore the habit of a Layman.

## M E M B E R S.

IV. *Heirs apparent of Peers.*

1. **O**N the 21st of January, 1549, it is ordered, That Sir Francis Russell, son and heir apparent of the now Earl of Bedford, shall abide in this House in the state he was before.

2. On the 9th of February, 1575, it is ordered upon motion, That John Lord Russell, son and heir apparent of the Earl of Bedford, shall continue a Member of this House, according to the precedent in the like case of the said now Earl, his father.—Vide the 10th of February.

3. On the 3d of December, 1708, it was moved, “ That the  
 “ eldest sons of the Peers of Scotland were capable, by the laws of  
 “ Scotland, at the time of the Union, to elect or be elected Com-  
 “ missioners for Shires or Boroughs to the Parliament of Scotland,  
 “ and therefore, by the treaty of Union, are capable to elect or be  
 “ elected to represent any Shire or Borough in Scotland, to sit in  
 “ the House of Commons of Great Britain.” It passed in the  
 negative. And the next day a new writ is issued for the Shire of  
 Linlithgow.—See the petition of Sir J. Mackenzie, on the 26th of  
 November, and of the Freeholders of Aberdeen, on the 27th of  
 November, 1708.

4. On the 2d of April, 1709, a new writ is ordered to be issued  
 for the district of Tain, in the room of Lord Strathnaver, the eldest  
 son of a Peer of Scotland, and thereby declared to be incapable to  
 sit in this House.

5. On

5. On the 17th of December, 1709, a new writ is ordered for Dyfart, in the room of Mr. Sinclair, who, being the eldest son of a Peer of Scotland, is declared to be incapable to sit in this House. See also, on the 18th of November, 1755, a new writ, in the room of Lord Charles Douglas.

6. On the 23d of May, 1787, a new writ is ordered for the district of Burghs of Lauder, &c. in the room of Mr. Charteris, now become the eldest son of a Peer of Scotland, and thereby incapable \* of representing the said district of Burghs in this House.

## O B S E R V A T I O N S.

I do not recollect to have met with any thing in the history of England, or to have found any instance in the Journals prior to that in 1549, relative to this subject; it is however not improbable, from this being at that time made a question, though decided in favour of Lord Russell, that formerly the same law existed in England as † in Scotland. Perhaps the reason for this might have

\* This expression seems more proper, than those used in the two former instances; as in both those cases, the persons were certainly capable of sitting in the House, if they had been returned for a County or Borough in England.

† By the Scotch law, the eldest sons of Peers were disqualified from being elected Commissioners of Shires or Boroughs in the Parliament in Scotland.—See the precedents of the 23d of April, 1685, and of the 18th of

March, 1689, cited in Mr. Irving's petition, presented on the 27th of November, 1708—in the Journal of the Commons:—And by an Act passed in the Parliament of Scotland, which is recited and ratified by the Act of Union, 5th Queen Anne, ch. 8th, sect. 12th, it is enacted, “That none shall be capable  
“ to elect, or be elected, to represent a Shire  
“ or Burgh in the Parliament of Great Bri-  
“ tain, for Scotland, except such as are now  
“ capable by the laws of this kingdom to

have been, to prevent the influence which the great Nobility would by this means have acquired in the House of Commons: it is, however, a fortunate circumstance for this country, that, if it ever was the law here, it exists no longer. It is of great importance that young Noblemen should pass through the House of Commons to the House of Lords; it is a school, wherein they hear the first principles of the constitution ably and freely debated; and, from this attendance, they acquire ideas of freedom and independence, and contract habits of business \*, which  
tend

“elect, or be elected, as Commissioners for “Shires or Burghs, to the Parliament of “Scotland.” See, in De-Foe’s History of the Union, p. 493 and 494, an account of what passed upon this subject in the Parliament of Scotland, on the 24th and 27th January, 1707. See also a pamphlet published in 1789, intituled, “Thoughts on the “Disqualification of the eldest Sons of Peers “of Scotland,” by Alexander Lord Saltoun; and another, published in 1790, and written by Mr. Chalmers, intituled, “The Right of “the eldest Sons of the Peers of Scotland, to “represent the Commons of that part of “Great Britain in Parliament, considered.”—In February 1792, the Lords of Session determined, “That Lord Daer, the eldest son of Lord Selkirk, who had been put on the Roll of Freeholders of the Stewartry of Kirkcudbright, had been improperly admitted;” and the Court ordered him to be struck off the Roll.—From this determination, there was an appeal to the House of Lords.—And on the 26th of March 1793, the Lords affirmed this Decision of the Court of Session.—So that this question is now at rest.

\* The truth of this observation has acquired an additional strength, since the passing of that excellent law, commonly called Mr. Grenville’s Act.—Besides abolishing that

shameful mode of trial, in which, under the former judicature for deciding Controverted Elections, every principle of decency and justice were notoriously and openly prostituted, (from whence the younger part of the House were insensibly, but too successfully, induced to adopt the same licentious conduct in more serious matters, and in questions of higher importance to the public welfare—an evil, which by Mr. Grenville’s Act is entirely done away) it cannot but be an object of the greatest satisfaction to every person, who is a friend to this constitution, to see young men of the first rank and consideration in the country, assiduously attending, for four, five, or six hours in a morning, to the hearing of Counsel and examination of evidence, and with great pains investigating the real merits of the cause before them: And to know, that their decisions upon those questions are formed, after several days hearing, with the most pure and upright intentions to determine according to the rules of law and justice, is a prospect, that, in every light, cannot but be pleasing to all, who know how much the freedom of this constitution, and in that the future happiness of this country, depends upon the spirit and character of those who are hereafter to be called forth, either to fill the great offices of the State, to give advice to their Sovereign in

tend to render them the support and best ornaments of the other House \*.

in matters of high import to the public welfare, or (in which they may be equally useful) to maintain such a conduct in Parliament, as that, by their wisdom and prudence, and reputation with the people, they may preserve inviolate that free constitution which was established at the Revolution; and which, whilst it continues unimpaired by any illegal exertions of power on the part of the Crown, or by any licentious abuses of liberty on the part of the People, is a blessing that Providence has never yet conferred on any other people, in any age, or in any country.—In a publication in 1789, of “Extra-Official State Papers,” by William Knox, Esq. late Under Secretary of State, Vol. II. p. 41, is the following account of part of a conversation, which the Editor of that work had with Mr. Grenville, at Wotton, upon the subject of Mr. Grenville’s returning into office.—“He told me, that he “found his health and spirits very much “declined; that he had given up all “thoughts of office, and did not wish to take “any active part in public business. And “indeed, he continued, with a deep sigh, “and putting his hand upon his side, I am “no longer capable of serving the public “—*My health and spirits are gone—The only “thing I have any intention of doing, is to en- “deavour to give some check to the abominable*

*“prostitution of the House of Commons in Elec- “tions, by voting for whoever has the support “of the Minister, which must end in the ruin “of public liberty, if it be not checked.”* In pursuance of this resolution, Mr. Grenville, on the 7th of March, 1770, proposed his plan in a most able and convincing speech. The bill received the royal assent upon the 12th of April, 1770; and Mr. Grenville died on the 13th of November following; with the satisfaction of having completed one of the noblest works, for the honour of the House of Commons, and the security of the constitution, that was ever devised by any Minister or Statesman.

\* In addition to habits of business, and attention to public affairs, Cicero gives another recommendation to the Senators of Rome, which is equally applicable to Members of the British Parliament. “Is Ordo “vitio careto—Cæteris specimen esto. Nam “licet videre, qualescunque Summi Civita- “tis Viri fuerint, talem Civitatem fuisse: “quæcunque mutatio morum in Principes “extiterit, eandem in Populo secutam. Ego “enim, Nobilium vitâ victuque mutato, “mores mutari Civitatum puto: Pauci “enim, admodum pauci, honore et gloria “amplificati, vel corrumpere mores Civi- “tatis, vel corrigere possunt.” Cicero de Legib. Lib. 3. cap. 14.

## M • E M B E R S.

V. *Embassadors, or Foreign Ministers.*

1. **O**N the 9th of February, 1575, it is resolved, That any person being a Member, and in service of Ambassade, shall not be amoved during such service.

2. On the 19th of November, 1606, a Committee is appointed to consider of the case of several persons, who had received employments from the King, since the last Session; and on the 22d, they report, and it was adjudged upon question, That Sir Charles Cornwallis, Embassador in Spain, Sir George Carew, Embassador in France, and Sir Thomas Edmunds, Embassador with the Arch-Duke, should still stand in their several places.

3. On the 24th of April, 1641, Sir Thomas Roe acquaints the House, That his Majesty has commanded him to undertake a Service at the Dyet in Germany, invited to it by the King of Denmark, and other Protestant Princes. He has leave from this House to be absent; and to continue a Member of this House, notwithstanding his employment as his Majesty's Embassador in Germany.

4. On the 15th of February, 1711, the election of Sir Henry Belasyse is declared void; he having, since his election, accepted the office of one of the Commissioners appointed to enquire into the number and quality of the forces in her Majesty's pay, in Spain and Portugal, and to examine into several accounts relative to those.

those forces.—See the Proceedings on the 9th and 14th of February, upon this question.

5. On the 5th of March, 1713, several writs are issued in the room of Mr. Herne, Mr. Murray, and Sir Joseph Martyn, they having accepted the offices of Commissaries; for treating with Commissaries on the part of France, for settling the trade between Great-Britain and France.

6. On the 17th and 19th of April, 1714, a question was moved, Whether this office of Commissaries, to treat with Commissaries from France, was a new created office, within the meaning of the Act of 6th Queen Anne? and passed in the negative."

7. On the 7th of July, 1715, on a question, Whether Mr. Carpenter, having been appointed Envoy to the Court of Vienna, is thereby included in the disability of the 6th Anne, ch. 7? it passed in the negative \*.

## OBSERVATIONS.

The question decided in 1606 was upon a message sent from the Lord Chancellor to the Speaker, desiring to know the sense of the House upon these appointments; and, though it sometimes happens, that the Boroughs for which Foreign Ministers are elected are, from the long residence of their Representa-

\* Notwithstanding the cases of Sir Henry Belasyse, and Sir Joseph Martyn and others —since the determination in General Carpenter's case, in 1715, no Ministers employed abroad have thereby vacated their seats. Mr. O.



tives abroad, deprived as it were of the privilege of sending a Member to Parliament, yet, from other considerations, this was a wise and proper determination \*. If it had been different, James the First, and Charles the First, when they were endeavouring to overturn the privileges of the House of Commons, would, amongst other measures, have availed themselves of this, and would, by such appointments, have vacated the seats of Sir Edward Coke, Mr. Selden, Mr. Pym, and those Members who were most strenuous in opposing the arbitrary attempts of the Court. This is not mere conjecture: On the breaking-up of the famous Parliament in 1621, King James having committed Sir Edward Coke, Sir Robert Phelips, † Mr. Selden, Mr. Pym, and Mr. Mallory, to prison, sent Sir D. Digges, Sir Thomas Crewe, Sir Nathaniel Rich, and Sir James Perrot, into Ireland, in commission with others, to execute some publick business. This, Mr. Hume says, was “as a lighter punishment; for the King at that time ‘† enjoyed,’ at least ‘exercised,’ the prerogative of employing

\* On a question about the eligibility of Sir Dudley Digges and Mr. Maurice Abbot, who were chosen whilst they were abroad on an Embassy to the Low Countries, Sir Edward Coke says, “Those who are employed abroad are without question eligible, though absent when they are chosen; for *absentia ejus, qui reipublicæ causa abest, non obest.*”—Parliamentary Debates in 1620–1, Vol. I. p. 49.—See the note in this Volume, under title “Members accepting Offices,” with regard to the persons appointed, by Act of Parliament in 1778, Commissioners to treat of peace with America.

† It should seem, from what is said in the Appendix to the Parliamentary Debates, 1620–1, and from his life in the *Biographia Britannica*, that Mr. Selden was not a Mem-

ber of this parliament; but that, on being consulted on the question relating to the privileges of Parliament, he had given his opinion in their favour.—His name is certainly not in the list of the Members returned to serve in this Parliament, which is printed in the 1st Vol. of Parliamentary Debates, 1620–1; and in Wood’s *Athen. Oxoniens.* Vol. II. p. 179, it is said, that the first Parliament he was elected into, was that which met in February 1623.—Yet, on the dissolution of the Parliament of 1620–1, Mr. Selden was committed, and lay in prison five weeks, for the opinions he had given in support of the privileges of the House of Commons!

‡ Mr. Hume ought to be commended for making this distinction in this place; as throughout his history, as well of the Tudors

“ ploying any man, even without his consent, in any branch of  
“ the publick service \*.”

dors as the Stuarts, he is but too apt to confound the meaning of these words ; and to apply them indiscriminately, in instances where he is not authorised so to do by the law and constitution of this government.

\* Vide Hume's History of the Stuarts, Vol. I. p. 88.—And see the Debates upon this subject in the Parliament of 1628, in the 1st vol. Rushworth, p. 522, particularly Sir Peter Hayman's speech.

## M E M B E R S.

VI. *Attorney-General, and Attendants on the House of Lords.*

i. **O**N the 17th of February, 1575, upon sundry motions, it was concluded, That, according to old precedents, Mr. Serjeant Geoffrey, returned one of the Knights for Suffex, may have voice, and give his attendance as a Member, notwithstanding his attendance in the Higher House, as one of the Queen's Serjeants, for his Counsel there; as the place where he hath no voice, nor is any Member of the same.

2. On the 22d of November, 1606, on a report from the Committee appointed to enquire into the cases referred by the Lord Chancellor to the Speaker, there was much dispute and confusion touching the case of Sir Henry Hebart, Attorney-General\*; at last, it was by voice over-ruled, that no question should be made of it, but that the matter should rest. And on the 24th Mr. Attorney came in of himself, and continued, by connivance, without other order.

3. On the 8th of April, 1614, this question is again much debated, and a Committee is appointed to search precedents: They report on the 11th, and the House resolve, upon question, That the Attorney-General † shall for this Parliament remain, but

\* It is said in the Journal, "Many precedents of the King's Serjeant and Solicitor, but none for the Attorney; *sed eadem ratio.*"

† In the debate upon this question, Mr.

Whitlock says, "Never any Master of the Rolls of the House, till Cromwell, 26th of Henry VIII. because all former Masters of the Rolls in Holy Orders, and so could not be of this House."

that no Attorney-General shall serve as a Member after this Parliament.

4. On the 7th and 8th of February, 1620, the same case occurring again, it was determined, upon the grounds of the last instance, that a new writ should issue.

5. On the 9th and 10th of February, 1625, a new writ is ordered in the room of Sir Robert Heath, Attorney-General, according to the precedent of 1614.

6. On the 29th of January, 1640, a new writ is ordered in the room of Mr. Herbert, who was Solicitor when he was returned a Burgess, and is now made Attorney-General, and in that respect, is \* to sit as an assistant in the Lords House.

## O B S E R V A T I O N S.

Upon what distinction the House of Commons excluded the Attorney-General, and admitted the Solicitor-General, and the King's

\* The Attorney-General, as an assistant to the House of Lords, is, on the trial of a Peer, to sit within the bar, unless he is a Member of the House of Commons, and then he is to be without the bar. In 1678, Sir William Jones, at the trial of Lord Pembroke; and in 1699, Sir J. Trevor, at the trial of Lord Warwick, both sat within the bar; neither

of them being Members of the House of Commons.—But in Lord Kilmarnock's trial, in 1746, Sir Dudley Ryder, being a Member of the House of Commons, did, on great consideration, appear without the bar; and so did Mr. Pratt, Attorney-General, at the trial of Lord Ferrers, in 1760. Mr. O,

Serjeants, to<sup>e</sup> sit, I do not know\*; they have all writs of summons to attend the House of Lords; and it appears from several entries in the Journals, particularly on the 29th of November, 1554, and the 4th of December, 1554, that before the reign of Queen Elizabeth, the Master of the Rolls, and the Attorney and Solicitor General, brought Messages from the Lords to the Commons, as the Masters in Chancery do now.—On the 1st of October, 1566, when, upon the death of the Speaker, Richard Onslow, Esq. was thought of to succeed him, he being then Solicitor-General, Mr. Comptroller moved the Lords, that being a Burgess, for the Borough of Steyning, and a Member of the Lower House, Mr. Onslow might be restored to them, to join in their election. Upon consultation had amongst the Lords, Mr. Onslow was sent down, with the Queen's Serjeant at Law, and the Attorney-General, “to shew for himself, why he should not be a Member of “the House;” but, though he alleged many weighty reasons, from his office of Solicitor, and from his writ of attendance in the Upper House, yet he was nevertheless adjudged to be a Member

\* The Attorney-General is an assistant in the House of Lord; whereas, the Master of the Rolls, King's Serjeants, Solicitor-General, and Masters in Chancery, are but attendants. Mr. O.—Mr. Onslow has here made a trifling inaccuracy; for the Master of the Rolls is not an *attendant*, but an *assistant*, to the House of Peers; as appears from the petition of Mr. Powle, then Master of the Rolls, on the 4th of December, 1690; and the report from the Committee of Privileges on the 9th of December; and the proceedings of the Lords on the 19th of December, 1690. However, as late as the 19th of December, 1640, the Master of the Rolls was sent as one of the messengers from the Lords, as the Judges, who are also assistants, sometimes are.—See in the Lor's Journals,

14th of January, 1692, the case of Mr. Somers, then Attorney-General, not attending, the Lords address the King, that he may attend as an assistant. As lately as the 7th of May, 1742, an objection was made, in the House of Lords, against admitting the Attorney-General to be heard as counsel in a cause then coming on; and the standing order of the 13th of June, 1685, was read and insisted upon; but the objection was over-ruled; and on the 13th of May, 1742, this standing order was altered; and now is, “That neither his Majesty's Attorney-General, nor any other *assistant* to this House, “*after having taken his place on the Wooljacks* “*as such*, shall be allowed to be of counsel, at “the bar of this House, for any private “person whatsoever.”

of the House of Commons\*. From that time, the person, holding the office of Solicitor-General, was considered as eligible to be a Member, though it appears from the instance of Mr. Herbert, in 1640, that the Attorney-General was excluded for near a century afterwards†. At present, however, none of the assistants or attendants on the Lords are excluded from being Members of the House of Commons, except the Judges. The Master of the Rolls‡, the Attorney-General, Solicitor-General, King's Serjeants, and Masters in Chancery, are frequently Members.—And, in a late instance, the Clerk of the Parliaments has been elected and permitted to sit as a Member of the House of Commons.

\* See the entry in the Journal of the 18th of January, 1580, where John Popham, Esq. the Solicitor-General, is brought down by the Queen's Serjeant, and by the Attorney-General, from the House of Lords, and restored to the House of Commons as a Member of the same, and is immediately chosen Speaker.

† See what is said upon this subject in D'Ewes's Journal, p. 424. 441, and 442.

‡ On the 9th of November, 1605, it is determined, That the Lord Chief Baron and Serjeant Snig, being attendants as Judges, in the Higher House, are not to serve here: If a Serjeant, to serve here.

## M E M B E R S.

VII. *Sheriffs; Returning Officers.*

1. **O**N the 2d of December, 1601, Mr. Fretchville, Knight of the Shire for Derby, is chosen Sheriff for that County, and is therefore licensed to depart home.—D'Ewes's Journal, p. 665.

2. On the 25th of May, 1604, a question is moved, touching the Case of Mayors, whether they may be of the House; and on the 25th of June, it is resolved, "That no Mayor should be elected, returned, or allowed to serve as a Member of this House;" and this to continue as an Act or Order of the House, for ever.

3. On the 23d of January, 1605, Sir J. Peyton, Knight of the Shire for Cambridge, and since chosen Sheriff; resolved, upon question, he shall attend his service here \*.

On the 20th of November, 1621, Sir J. Strangeways says, That Sir T. Thynne, a Member of this House, is pricked Sheriff for Gloucestershire; he desireth to know, whether the House will dispense with his service here; or otherwise set down how he may dispense with his conscience, having taken an oath to be resident in that County during the time of his Sheriffalty.

Mr. Alford says, that there is no Parliament man but knows, that Sheriffs have usually served here during the time of their Sheriffalty.

Sir William Bowlstred says, that he was pricked down Sheriff of his County, when he was a Member of this House, and was forced to serve that office, by order of the House, notwithstanding he moved the House, that he might be discharged of the same.

It is the opinion of the House, That Sir T. Thynne shall serve his Sheriffalty, notwithstanding he is a Member of this House. —Parliamentary Debates in 1620-1, Vol. II. p. 177.

4. On the 9th of April, 1614, Sir George Selby, Sheriff for Durham, elected Knight of the Shire for Northumberland, and his election declared void, and a new writ issued.

5. On the 14th of April 1614, Berry, Bailiff of Ludlow, having returned himself, is removed, and a new choice; and also resolved, upon question, "That all Mayors and Bailiffs, that " are in Berry's case, be removed." So in the instance of the Mayor of Cambridge, 22d of March, 1620.—Vide 18th of February, 1625, the case of Mr. Gay.

6. On the 10th of February, 1625, the King sends a message by the Chancellor of the Exchequer, taking notice, that Sir Edward Coke, being Sheriff of Buckinghamshire, was elected Knight of the Shire for Norfolk, and therefore hopeth the House will do him that right, as to send out a new writ; this is referred to the Committee of Privileges. On the 27th of February, Sir J. Finch reports from that Committee a great deal of learning upon the subject, but no opinion. This matter is adjourned from day to day, and the Session is put an end to, without the House coming to any determination upon it; but it does not appear that Sir Edward Coke ever took his seat in this Parliament. On the 9th of June, 1626, a few days before the Parliament was dissolved, it was resolved, upon question, "That Sir Edward Coke, " standing *de facto* returned a Member of this House, shall have " privilege."

7. On the 20th of January, 1628, motion made, That Mr. Lynn, being chosen Mayor of Exeter, might be discharged, and a new writ; but ruled, That being a Member before he was elected Mayor, he ought to serve here; and he is to be sent for to attend accordingly.

8. On



8. On the 21<sup>st</sup> of April, 1640, the House, in an order for producing instructions from the Privy Council, take notice of Members who 'are now' Sheriffs.

9. On the 16<sup>th</sup> of November, 1675, resolved, 'That it is a breach of privilege, for any Member to be made a Sheriff, during the continuance of the Parliament; and a Committee is appointed to consider of a proper way of superseding the commission \*.— See the case of Sir Robert Bradshaw, on the 25<sup>th</sup> of November, 1678.

10. On the 27<sup>th</sup> of March, 1677, the petition of Mr. Hatcher, Sheriff of the County of Lincoln, claiming to be duly elected for the Town of Stamford, is rejected; he having himself returned another person, as duly elected for the said Town †.

11. On the 2<sup>d</sup> of June, 1685, it is resolved, That no Mayor, Bailiff, or other Officer, to whom the Precept ought to be directed, is capable of being elected to serve in Parliament for the Borough of which he is Mayor, Bailiff, or Officer, at the time of the election.—See the case of Hythe, on the 3<sup>d</sup> and 4<sup>th</sup> of June; on the 6<sup>th</sup> of June, and the 17<sup>th</sup> of November, Town of Callington; 15<sup>th</sup> of June, Town of Honiton; all in 1685.—See also the case of Mr. Burridge, Mayor of Lyme, on the 3<sup>d</sup> of February, 1727.

12. On the 7<sup>th</sup> of January, 1689, resolved, *nem. con.* That the nominating any Member of this House to the King, to be made a

\* See in Grey's Debates, Vol. IV. p. 16. the debate on Sir Edmund Jennings being appointed Sheriff for the County of York;

which gave occasion for this resolution.

† See the debate upon this question in Grey's Debates, Vol. IV. p. 315.

Sheriff, is a breach of privilege; and the House address the King to appoint another Sheriff, in the room of Sir Jonathan Jennings, High Sheriff of Yorkshire; which, as appears on the 18th of January, the King complies with.

## O B S E R V A T I O N S.

The obligation which Sheriffs are under, by law, of residing in their Counties during great part of the time of their Sherifalty, was \*, I suppose, the reason that induced the House of Commons not to permit them to be elected Members, even for other Counties; or, being already elected, not to allow their being 'appointed' Sheriffs: the earlier cases use the expression of being 'chosen' Sheriffs; but it is well known, that, though formerly they were elected by the Freeholders of the several Counties, as Coroners are to this day, this custom has ceased ever since the 9th of Edward II. and they are now appointed by the King.

The activity with which old Sir Edward Coke had opposed the arbitrary measures of James the First, and that amazing fund of constitutional knowledge with which he supported the Privileges of the House of Commons, was a sufficient reason for Charles the First, to endeavour, by appointing him Sheriff, to exclude him from a seat in that House; and this measure so far succeeded, that, though the House of Commons would not come to any decision upon the question, he certainly never sat in the second Parliament summoned by that King. It should seem from No. 8, that the

\* Mr. Recorder Finch says, "The reason is. why no Sheriffs shall be of this House. that they are the King's Vicege-

rents, and are necessarily to be assiant in their Government."—Parliamentary Debates, in 1620-1, Vol. I. p. 213.

House, perhaps alarmed at this measure of the King's, did not afterwards adhere so strictly to the precedent of No. 4. but admitted Sheriffs to be elected.

It seems now settled, by the Case of No. 12, that it is not lawful for a Member of the House of Commons to be appointed Sheriff of a County, that is, "by the King:" where they are eligible "by the people," as for Middlesex, it is still very customary; and indeed, in this instance, the two services, being both in the same County, are not, as in other cases, so incompatible with each other.

The question, Whether a person, who is Sheriff for a County, is eligible for any Borough within that County, came to be decided, in the case of Abingdon, in the year 1775, before a Committee appointed under Mr. Grenville's Bill. In that case, and in the instance of Mr. Fleming, who was Sheriff for Hampshire, and returned for the Town of Southampton (both which cases are reported in that excellent collection of cases of Controverted Elections, published by Mr. Douglas \*) there is much curious learning on this Subject, particularly in the very ingenious arguments of the Counsel.—The conclusion to be drawn from these instances, particularly that of Abingdon, seems to be, that a Sheriff of a County is not eligible for any Town or Borough within that County, where the election proceeds by virtue of his own precept; but that this doctrine does not extend to the case of those Cities or Towns (though within his County) which are Counties within themselves, and have Sheriffs, or Returning Officers, to whom the writ issues immediately from the Office of the Clerk of the Crown, without passing through the hands of the Sheriff of the County at large, or requiring the intervention of his Precept.

\* One in the 1st volume, p. 419; and the other in the 2d volume, p. 87.

## M E M B E R S.

VIII. *Sick.*

1. **O**N the 11th of November, 1558, where suit is made, that some Burgesses, being sick, might be removed, and writs for others in their places; the House doth resolve, That they shall not be amoved, notwithstanding their sickness. Yet it appears from D'Ewes, p. 126, that on the 29th of October, 1566, a new writ was issued in the room of a Member 'reported' to be lunatick.

2. On the 9th of February, 1575, it is resolved, That no person, visited with sickness, shall be amoved from his place in this House, nor any other elected during such sickness.

3. On the 9th of November, 1605, two cases occur of Members sick; and the House in one of them decide, that the Member shall continue to serve; and in the other, (he being weak, and by reason of age not able to serve, and not likely to recover) that he be removed; and a new writ is issued in his room \*. So on the 2d of March, 1609, on a certificate of the great sickness of a Member for Coventry, a warrant is ordered for a new writ.

4. On the 8th of March, 1623, Sir Thomas Gerrard petitions to be discharged, in respect of his infirmity of health. It appears, from the further Proceedings in this case, that this was only an excuse, he being unwilling to take the Oaths. But Sir George Moore says, "Members once chosen are not to be discharged without some very great cause, 'as a disease incurable.'"

\* A question is made upon this day, the 9th of November, touching Sir Henry Carey, *captive*, and resolved, "That he do stand still as a Burgess, and not to be amoved."

5. On the 18th of August, 1641, a motion is made for a new writ, in the room of a Burgess who is very infirm from great age; but it was not granted by the House.

6. On the 7th of March, 1715, Mr. Pryse writes a letter \* to the Speaker desiring to be excused attending, on account of the ill state of his health, and that a new writ may issue in his room. The House do not comply with his request, but order him into custody for not attending; and on the 23d of March, he, continuing to abscond, is expelled.

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## O B S E R V A T I O N S.

The impossibility of ascertaining the degree of infirmity under which a Member may labour, and of pronouncing that he is incurable, is a sufficient cause for not removing him, though to all appearance he may never be able to attend again; besides, that such a practice would open a door for Members to quit their seats, under this pretence; and therefore, “when they are once chosen, they are not to be discharged, but by operation of law.”

\* Mr. Pryse, in his letter, urges Prynne's opinion in favour of excusing the attendance of Members, who are ill of incurable distempers.

## M E M B E R S.

IX. *Outlaws, and in Execution.*

1. **O**N the 9th of February, 1575, it is resolved, That no Member be removed, though in execution.

2. On the 22d of March, 1603, a motion was made on behalf of Sir Francis Goodwin, who had been elected Knight of the Shire for the County of Bucks; but, the Clerk of the Crown refusing to accept the return of his Election, “*quia Utlagatus*,” Sir John Fortescue had been elected on a second writ. The House immediately entered into an enquiry of this matter; the proceedings upon which were afterwards printed by order of the House of Commons, in 1704, under the direction of the Speaker, Mr. Harley; and are to be found in the 5th vol. of the Parliamentary History, p. 57 \*, and in the State Trials, Vol. VII. p. 67.

3. This question upon Sir Francis Goodwin occasioned a Bill to be offered, “to disable all outlawed persons, and persons in execution †, and all recusants convicted, to be of the Parliament;” but upon the third reading, on the 18th of April, 1604, this Bill was, upon the question, dashed, ‘and not one Yea,’ and ordered to be so entered.

4. On the 28th of May, 1624, resolved, upon question, That Mr. Huddleston may serve as Knight of the Shire for Cum-

\* This case is extremely well worth reading, as it contains a great deal of very curious Parliamentary learning.—See also the case of the Election of Knights of the Shire for Norfolk, as reported in D’Ewes’s Journal, p. 396.

† See the Case of Sir Thomas Shirley, on the 22d of March, 1603, in the first volume of this Work, and the observations upon it.—See also the cases of Fitzherbert and Giffard in the same volume.

berland, notwithstanding he be outlawed \*.—See also the case of Mr. Smythe, on the 24th of February, 1558; when it is determined, on a division, “ That he shall continue a Member.”

5. On the 22d March, 1625, it is referred to a Committee to examine into the election of Sir Thomas Monke; who report on the 24th; and the House being informed, that he was in execution before, and at the time of his election, order a new writ to issue for a choice in his room.

6. On the 17th of February, 1667, information being given, that Sir H. Vaughan, being elected for the County of Carmarthen, was a person outlawed, after judgment, for a debt due on a bond; and the question being, Whether he can regularly be continued a Member of the House; it is referred to the Committee of Elections; who, on the 11th of April, report, “ That there was nothing  
“ objected against Sir H. Vaughan, to impede his fitting in Par-  
“ liament, or that he was not duly elected a Member;” to which resolution the House agreed.

7. On the 16th of February, 1676, information being given to the House, that Sir Robert Holt, a Member, was detained prisoner in the Fleet; the matter is referred to the Committee of Elections; who report, on the 2d of April, “ That Sir Robert Holt, being  
“ taken in execution out of privilege of Parliament, be not dis-  
“ charged from his imprisonment: And, “ That the outlawry,  
“ after judgment, is another good cause why he ought not to be  
“ discharged.” To both which resolutions the House disagree, and order him to be delivered out of custody.

\* See the report of this case at length, in Glanville's Report of Cases of Election, p. 124.

8. On the 25th of March, 1690, a petition from Mr. Montagu, who was a prisoner in execution in the King's Bench at the time of his election, was presented, desiring that he might have his privilege: This matter is referred to a Committee, to examine and search for precedents; who report\*, on the 5th of May, a variety of Cases, beginning with Thorpe's case, of Members in execution; but they come to no opinion upon the case of Mr. Montagu; and the House put off the consideration of the report from time to time, and do not, as I can find, proceed to any resolution upon it.

9. On the 10th of November, 1707, Mr. Asgill writes a letter to the Speaker, that he is detained a prisoner in the Fleet, upon two executions.—This matter is referred to the consideration of a Committee; who, on the 15th of November, and 16th of December, report the fact, and the several precedents of Members in execution, and the manner of their being released; and the House immediately order him to be delivered out of custody, by the Serjeant with the Mace: On the next day, the 17th of December, the Serjeant reports, That he had delivered the order to the Warden of the Fleet, who had paid obedience to it, and that he had delivered Mr. Asgill out of his custody.

## O B S E R V A T I O N S.

It should seem, from the result of these cases, that a person is eligible to be a Member, though an Outlaw, or in Execution, at

\* It is said in this report, that Sir Trevor Williams, and others, did serve as Members of the last Parliament, though they were charged in execution before the date of the letters of summons.



the time of his election.—The great pains \* taken to ~~outlaw~~ Sir Francis Goodwin, in order to introduce Sir John Fortescue, ‘Chancellor of the Duchy of Lancaster,’ and the very extraordinary clause, to exclude bankrupts and persons outlawed, inserted in the King’s proclamation † for calling this, his first, Parliament, shew how very early in his reign King James entertained the idea of interfering in the election of Members of the House of Commons, in order to model that assembly for his own purposes. Had he succeeded in establishing the doctrine, “That persons employed “in foreign embassies, Sheriffs of Counties, bankrupts, and persons outlawed, or in execution, ought not to be elected, or to sit “in Parliament,” he would, by some or other of these methods, have found means to withdraw from their service, in that House, many of its ablest Members, to whose spirit and attention we, at this distance of time, are very much indebted, for the existence of the freedom, which this nation now enjoys.

\* As appears from p. 71 of the 5th volume of Parliamentary History.

† See this proclamation at large, in the 5th volume of Parliamentary History, p. 4. Notwithstanding the many clauses in this curious State paper, directly contrary to law, particularly the last, which notifies, “That if any returns are made contrary to this proclamation, the City and Borough “shall be fined for the same; and if it be “found that they have committed any gross “or wilful default and contempt in their “election, return, or certificate, that then “their liberties, according to the law, are “to be seized into our hands as forfeited; “and the person returned, contrary to the “purport, effect, and true meaning of this “proclamation, to be fined and imprisoned “for the same;” the Compilers of the Parliamentary History cannot avoid, with their accustomed partiality in favour of the King’s prerogative, and in derogation of the liberties

of the people, expressing their commendations of it. “It must be owned,” say they, “by every impartial reader, that these were “noble injunctions; and, if rightly followed, will always be the means to have a “free and independent Parliament.”—The reader will see many instances of a similar partiality, referred to in the first volume of this Work, p. 85, 134, 150, 204.

These observations are not meant to detract from the merit of that history, so far as it contains much Parliamentary learning, compiled with great labour and assiduity; but to caution the reader against trusting to the conclusions drawn by the compilers, from their materials; and to recommend to him to consider those volumes merely as a collection of Historical Tracts and State Papers, from whence he may draw his own inferences, and form his opinions on the law and constitution of Parliament.

With

With respect to Members who are actually in execution at the time of their election, it appears from Asgill's case to be clear that this is no disability \* ; and that they are entitled by law, that is, by the privilege of Parliament, to their release. The Statute of 1st James I. ch. 13, regulates in what manner the party, at whose suit such execution was pursued, shall have his remedy, after the privilege of that Session of Parliament shall cease, in which such privilege shall be allowed : and Sheriffs and their Officers are, by the same Statute, indemnified for delivering such persons out of execution.

\* On a more accurate examination of the circumstances attending Asgill's case, they do not appear to justify this conclusion.—They are these—Asgill had been elected Member for Bramber in the Parliament chosen in 1705; that Parliament was, on the 24th of April, 1707, prorogued to the 30th of April.—Queen Anne, by a proclamation dated the 29th of April, declared, “ That it “ is expedient, that the Commons of the “ present Parliament should be Members of “ the House of Commons of the first Parliament of Great Britain; and the Commons of the present Parliament are accordingly “ to be ” the Members of the “ first Parliament of Great Britain, for and “ on the part of England.” By another proclamation dated the 5th of June, 1707, the Queen (after reciting that 16 Peers and 45 Commissioners had been chosen to be the Members of the respective Houses of the first Parliament of Great Britain, for and on the part of Scotland) declares, “ That the “ first Parliament of Great Britain shall “ meet and be holden ” on the 23d of October next.—Mr. Asgill had been ar-

rested in execution on the 12th of June; the doubt therefore was, Whether, by the declaration in the proclamation of the 29th of April, the Members of that House of Commons (and Mr. Asgill as one of them) were continued, and became from that time Members of the first Parliament of Great Britain, and so entitled to privilege (though the Parliament was not further prorogued from the 30th of April, nor any time then specified for the summoning or holding of the Parliament?) Or, whether the 23d of October, 1707, the day on which the first Parliament was to “ meet and be holden,” was not to be considered as the day on which, in the case of an usual summons of a Parliament, the writs would have been made returnable?—The circumstances attending the meeting and summoning of this Parliament are anomalous; and, as the House of Commons do not on the 16th of December, state the grounds on which they determined “ that Mr. Asgill “ ought to have privilege,” it is very difficult to ascertain precisely what those grounds were.

X. *Accepting Offices.*

## M E M B E R S.

1. **O**N the 23d of November, 1606, it was resolved, That new writs should issue in the room of Sir Thomas Ridgeway, Treasurer at War in Ireland; of Sir Henry Wynch, Lord Chief Baron in Ireland; and of Sir Oliver St. John, Master of the Ordnance in Ireland; because, as the Committee report, "their patents were for life, and therefore differ from the case of "Embassadors."

2. On the 24th of December, 1698, a petition is presented from Sir Henry Colt, objecting to Mr. Montagu's election for Westminster, as incapable of being chosen to serve as a Member in Parliament; on the report, on the 22d of December, this objection is explained to be, "That he was one of the Lords Justices \*, and had signed a proclamation for proroguing the Parliament:" But the Committee and House having considered this objection, are both of opinion, "that Mr. Montagu was duly "elected."

3. On the 10th of February, 1698, Mr. Isaacson is expelled for having acted as a Commissioner of the Stamp Duties †, in breach of the 5th of William and Mary, ch. 7.: And on the 13th of February, Mr. Cornish is expelled for the same offence.

\* See under this title, N<sup>o</sup> 14, the case of Lord Middleton.

† As long ago as the year 1348, the 22d Edward III. the Commons pray the King, "That no person summoned to Parliament, "should be either a Taxer, Collector, or Receiver of the Fifteenth then granted."

And again in the 25th Edward III. the Knights, Citizens, and Burgessees pray, "That "none of them may be made Collectors of "the aid then granted."—See Rot. Parl. Vol. II. p. 203. N<sup>o</sup> 24.—p. 240. N<sup>o</sup> 27.—p. 308. N<sup>o</sup> 45.—p. 317. N<sup>o</sup> 12.—p. 368. N<sup>o</sup> 48.

4. The case of Mr. Montagu, on the 13th of February, 1698, was particular :—The new Parliament was made returnable on the 24th of August, 1698, and was directed to sit for the dispatch of business on the 29th of November; Mr. Montagu had been a Commissioner of the Stamp Duties, but in the commission which passed in September, 1698, he was left out; it appeared that he had acted under the former commission, till the 4th of October, 1698; but having informed the House that he did not qualify himself as a Member till the 29th of November, and so conceived himself not to be within the law of the 5th of William and Mary, ch. 7. sect. 57, he is, upon the question, called in to take his place; and a Committee is appointed to draw up and state the matter of fact. I do not find they make any report..

5. On the 19th of February, 1700, Sir Henry Furnese is expelled, for acting as a Trustee for circulating Exchequer bills, in breach of the 5th of William and Mary, ch. 7.—On the 22d of February, Mr. Heathcote is expelled for the same offence.

6. On the 18th of November, 1707, the House having ordered lists to be laid before them, of the persons appointed to execute certain offices which disqualified them from sitting in Parliament, consider those lists, and order new writs to be issued in the room of several Members, whose names appear in those appointments.—This was in the beginning of the first Parliament after the Union; in which, by the Queen's proclamation, the same persons were continued Members of the House of Commons, as had been of the preceding Parliament; and, till the expiration of which last Parliament, the Act of the 4th of Queen Anne, ch. 8, for excluding these officers, did not take place.

7. On the 5th of February, 1708, Sir Richard Allen, on the hearing of his petition, is declared duly elected for Dunwich; on the 7th of February, he surrenders an office in the Customs for life, to which he had been appointed in May, 1678; on the 8th of February, this surrender is enrolled; and on the 9th of February, he desires the sense of the House, before he takes his seat, on the clause of the 12th and 13th of William III. ch. 10, which relates to the Officers of the Customs; and upon reading the letters patent, and surrender, he is admitted to take his seat.

8. On the 26th of November, 1709, a new writ is issued in the room of Mr. Aylmer, appointed Admiral and Commander in Chief of the fleet\*.

9. On the 26th of February, 1710, Sir J. Anstruther (a Member) by the death of his father becomes entitled to an office in Scotland, of heritable right; but before he accepts it, he desires the sense of the House, Whether by accepting it, he shall be incapacitated from sitting. On the 10th of April, 1711, the House determine, that the office is within the meaning of the 12th and 13th of William III. relating to Officers of the Customs; but that Sir John Anstruther, not having taken, enjoyed, or executed the same, is capable of being a Member†.

10. On the 8th of April, 1714, the House are unanimously of opinion, that Mr. Anstis, a Member, having accepted the reversion of the office of Garter King at Arms, after the determi-

\* This case, as well as that of James Campbell, Esq. on the 13th of December, 1763, were of persons who had been formerly in the respective services of sea and land; but had been dismissed from or quitted the service; and were therefore not to be con-

sidered as coming within the Statute of the 6th of Queen Anne, ch. 7, sect. 28. Mr. O. —See Mr. Campbell's case, in the Note to N<sup>o</sup> 30, under this head.

† Vide Note to N<sup>o</sup> 28.

nation of the letters patent, 'now in being,' to Sir Henry St. George, may still continue to sit; but on the 27th of March, 1716, this reversion falling in, a new writ is moved for in the room of Mr. Anstis: On the 28th, the letters patent are read; but, the question for the writ being put off by adjournment to the 6th of April, and the House immediately adjourning to the 9th of April, this matter drops; nor can I find that it was resumed till near two years after, when, on the 7th of December, 1717, a new writ is ordered.

11. On the 28th of March, 1715, Mr. Webb desires the sense of the House, in respect to his being appointed Governor of the Isle of Wight, by letters patent, which passed the Great Seal since his election, but issued pursuant to a warrant granted before the election; on the 29th, the warrant and patent are read, and Mr. Webb came and took his place in the House.

12. On the 21st of November, 1715, a new writ is issued in the room of Mr. Farrer, who hath ~~accepted~~ the office of Master, Keeper, and Governor of the hospital of St. Catharine \*, near the Tower of London.—See also, the 27th of May, 1723, a new writ in the room of Mr. Berkley.

13. On the 21st of February, 1716, General Carpenter, having accepted the Commission of Governor of Minorca and Port Mahon, desires to know the sense of the House, whether he may sit in the House, in respect of the statute of 6th Anne, ch. 7. sect. 28. The commission and instructions are read—after which, it being

\* This office is in the gift of the Queen Confort; but there being no Queen Confort at either of these times, it was given 'by the Crown,' and so came within the Statute of 6th Queen Anne. Mr. O.

the sense of the House, that it was a Military Commission, the said Lieutenant General came into the House \*.

14. On the 17th of January, 1717, Lord Midleton, Lord Chancellor of Ireland, desires the sense of the House, Whether he is incapacitated to sit, in respect to his being continued in a commission for Ireland, which commission has been renewed since his election, 'but is an office of no profit.' The House are of opinion, that he is not within the meaning of the 6th of Anne, ch. 7, and he accordingly came into the House †.

15. On the 19th of March, 1717, a new writ is ordered to be issued in the room of a Member who has accepted a pension from the Crown during pleasure.—See also the 16th of July, 1783; and the 10th of December, 1787.

\* This was before the passing of the Statute 15th George II. ch. 22. by which all persons holding any office, civil or military, either at Minorca or Gibraltar, are disabled from being elected; or of sitting and voting as Members.—See 21st April, 1762, the instance of a new Writ for Westminster, in the room of General Cornwallis, who had accepted the office of Governor of Gibraltar.—And the same, in the case of Sir Henry Clinton, on the 30th December, 1794.

† I have been informed by the present Lord Midleton, that this commission was that of one of the Lords Justices of Ireland.—In 1723, the doubt occurred again, upon Lord Chancellor Midleton, then a Member of the House of Commons in England, being appointed one of the Lords Justices of Ireland, but *with a salary*.—In a letter from his Lordship to his brother, Thomas Broderick Esq. dated Dublin, 13th of June, 1723,

and which has been communicated to me by the present Lord Midleton, are the following passages: "Upon the advice of my friends here, I am determined to be sworn this day one of the Lords Justices; though I confess when I left London, my own sentiments were, that it would be more advisable not to be sworn, nor to take upon me the Justiceship, to prevent any dispute about my accepting it making my Election void—But, when I consider that Mr. Craggs, being made one of the Lords Regents of Great Britain, was not looked on to vacate his election, and that Mr. Walpole is now made one of the Lords Justices of Great Britain, I cannot see the difference between the cases, as to this point:" Accordingly Lord Midleton took upon him the office, and did not vacate his seat upon this appointment.—See before, N° 2, the case of Mr. Montagu.

16. On the 20th of March, 1717, a new writ is issued in the room of a Member appointed Master of Greenwich Hospital for life.—The practice however has lately been, to consider this as a military government, when accepted by Officers of the Navy; neither Sir George Rodney, nor Sir Charles Hardy, vacated their seats on their appointment to it\*.

17. On the 10th of June, 1720, and 7th of May, 1730, there are writs in the room of Governor and Lieutenant Governor of Chelsea Hospital†.

18. On the 3d of April, 1721, the opinion of the House is taken on General Stanwix's having accepted the office of Governor of Hull; and the commission being read, the House first resolve, "That this is not an office in the Army," and then order a new writ: So on the 18th of January, and 22d of January, 1732, new writs are ordered in the room of Members, accepting the offices of Governors of Hull and Berwick; but on the 9th of June, 1733, on General Wade's accepting the office of Governor of the three forts in Scotland, the House resolve ‡, "that the accepting a commission of Governor, or Lieutenant Governor, of

\* See the case of Sir William Gifford, on the 10th and 12th of February, 1710; where it was determined, that this, being an office existing before the 4th of Queen Anne, was compatible with a seat in Parliament.

† These offices too have of late been considered as military governments, when given to officers in the army.

‡ Jersey and Guernsey are considered as military governments, within the resolution of the 9th of June, 1733. Mr. O.—On the 9th of February, 1784, Lord George Lenox accepted the Office of Constable of the Tower of London. There were some doubts, whether this was a civil or a military appoint-

ment. It had been held by persons not officers in the army; neither was the appointment by a commission under the Sign Manual, but by a grant under the Great Seal. On the other hand, it was stated to be an office paid out of the military establishment; and with respect to the form of the appointment, it was under the same circumstances with the governments of Jersey and Guernsey, which are under the Great Seal. On the 3d of March, 1784, it was resolved, "That the acceptance of this office, by an officer in the army, did not vacate his seat."



“ any fort upon the military establishment, by a Member, ‘ being an officer in the army,’ does not vacate his seat.” Before they came to this resolution, the before cited instances of the 3d of April, 1721, and of the 18th and 22d of January, 1732, were read; and also of the 28th of February, 1708, of a new writ in the room of the Deputy Governor of Dover castle; and also of the 17th of February, 1710, in the case of the Governor of Tinmouth fort; and also of the 1st of February, 1711, the case of the Lieutenant Governor of Hull; and also of the 25th of April, 1715, of the Governor of Fort William.

19. On the 24th of May, 1726, and on the 14th of January, 1729, new writs are ordered in the room of Members made Curfitor<sup>us</sup> Barons of the Court of Exchequer; but in the latter case Mr. Baron Birch is re-elected, and sits as a Member, till he is expelled on the 30th of March, 1732.

20. On the 16th of April, 1728, it is resolved by the Committee of Elections, that Mr. Ongley, having an office in the Customs at the time of the election, is incapable of ‘ claiming to fit.’—See also, on the 11th of February, 1734, the case of Mr. Trelawney, who was a Commissioner of the Customs at the time of his election \*.

21. On the 13th of May, 1729, a new writ is issued, in the room of Mr. Erskine, made a Captain of Foot in his Majesty’s Army.—So on the 3d of December, 1744.

22. On the 14th of May, 1729, a new writ is issued in the

\* A new writ was issued in the room of Mr. Trelawney, who, since his election, hath continued to enjoy the office of one of the Commissioners of the Customs.

room of Mr. Cary, who had accepted the office of one of the Clerks of the Privy Council.

23. On the 25th of January, 1730, and 10th of January, 1765, new writs are issued in the room of Governor and Lieutenant Governor of the Isle of Wight.

24. On the 30th of March, 1736, a new writ is issued in the room of Sir James Fergusson, who had accepted the office of one of the Senators of the College of Justice in Scotland.

25. On the 28th of February, 1736, a new writ is issued in the room of Mr. Tucker, who had accepted the office of Supervisor of his Majesty's Quarries, in the Island of Portland.

26. On the 20th of June, 1737, a new writ is issued in the room of Lieutenant Colonel Mordaunt, who had accepted the office of one of the Equerries to his Majesty.

27. On the 20th of February, 1739, see the proceedings on the question of Mr. Corbet's having an office, supposed to be created since the 25th of October, 1705.

28. On the 25th of November, 1740 \*, Sir Watkin Wynn has  
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\* This case of Sir Watkin Wynn was founded in several precedents of reversionary grants of offices not vacating seats, till they devolved upon, and were actually possessed by, the reversionary grantees; as being then only 'accepted,' within the meaning of the 6th of Queen Anne.—See the warrant of Mr. Horace Walpole's writ, in

the Journal of the 25th of November, 1717; and of Mr. Pultney's, the 7th of May, 1726; and of Mr. Aislaby's, the 24th of January, 1737; and of Mr. Spencer's, the 27th of November, 1744.—All of whose grants were reversionary, and then only accepted. Mr. O.—The writ issued on the 25th of November, 1762, for Dunwich, in the room  
of

an office come to him 'by reversion,' on the death of his father; a new writ issues.—See also the case of Mr. Legge, the 7th of December, 1759.

29. On the 22d of June, 1742, the House resolve, Nemine Contradicente, "that the accepting the office of Master General " or Lieutenant General of the Ordnance, 'by an Officer in the " army,' does not vacate the seat."

30. On the 23d of October, 1745, and the 3d of December, 1759, new writs are issued in the room of persons accepting the offices of Colonel and Lieutenant Colonel in his Majesty's army.—See also the 21st of May, 1783, a new writ for Newton, in the room of Mr. Legh, made an Ensign of Foot in his Majesty's army\*.

31. On the 18th of June, 1751, several writs are issued in the room of Members accepting offices in the Duchy of Cornwall, at that

of Mr. Fox, was upon the office of Clerk of the Pells in Ireland, of which he had long had the reversion, devolving upon him, on the death of Lord Melcombe.—So the instance of Sir James Erskine's vacating his seat for Morpeth, on the 14th of February, 1785, was upon a reversionary office falling to him, by the death of his predecessor: and on the 27th of February, 1794, Mr. Fred. North vacated his seat for Banbury, by succeeding, on the death of the Duke of Newcastle, to the beneficial interest of the office of Comptroller of the Customs in London; the reversion of which had been granted to him by his Father, Lord North, when Minister:

I remember an instance of Mr. Norris, Member for Rye, who had an office in re-

version, upon his father's death; when his father died, he declined accepting the office (that is, he immediately resigned it to the Duke of Grafton, then First Lord of the Treasury; and his resignation was formally inrolled in Chancery) and his seat was consequently never vacated.

\* On the 13th of December, 1763, James Campbell, Esq. having accepted the office of Governor of Stirling Castle, there was some doubt whether he vacated his seat; this doubt arose from his having formerly been an officer in the army, though he had quitted it for some years, and had now no commission, nor was upon half-pay. The case was argued upon the resolution of the House of the 21st of February, 1746, in the case of General Carpenter; and of the

that time in the King's hands \*, by the death of the Prince of Wales; but on the 19th of April, 1763, on a question relating to Mr. Morrice's writ, the House decided differently, that the acceptance of the office of Warden of the Stannaries did not vacate his seat.—Vide the 17th of March, 1752 †.

32. On the 22d of December, 1755, a new writ is issued, in the room of Mr. John Yorke, who had accepted the office, called the office of the Execution of the Laws and Statutes concerning Bankrupts.

33. On the 26th of January, 1756, see the proceedings of the House, on a suggestion, that three persons, being appointed to the office of Vice Treasurer of Ireland, were more than had executed that office since 1705.—Vide the 10th and 11th of March, 1756.

34. On the 19th of January, 1759, a new writ is issued, in the room of Mr. Orby Hunter, who had accepted the office of Superintendant of Forage, Provisions, and Extraordinaries, for his Majesty's Combined Army, under the command of Prince Ferdinand of Brunswick.

9th of June, 1733, in General Wade's case, and upon the practice of the House in some similar instances to Mr. Campbell's, viz. Sir Henry Erskine's and Lord Robert Sutton's. But upon great deliberation, it was determined, that Mr. Campbell, 'not being an officer in the army,' did not come within that resolution, but was subject to the provisions of the Act 6th Queen Anne, ch. 7.

\* When application was made to Parliament in 1795, for the payment of the debts of the Prince of Wales, there was much dis-

cussion, respecting the nature of the tenure of the Duchy of Cornwall; and the rights to the revenue arising from it during a minority. See those debates: the Prince's Case in Coke's Reports; and Collins's Precedents concerning Baronies by Writ, p. 148.

† Compare these determinations with the proceedings of the House in the cases of Members appointed masters of the Hospital of St. Catherine; and of those who have been appointed by the King to be servants to the Prince of Wales, when under age.

35. On the 22<sup>d</sup> of January, 1760, the House resolve, that Sir William Peere Williams, having been appointed Captain in the army by brevet, 'but not receiving, or being entitled to receive pay,' does not thereby vacate his seat.

36. On the 19<sup>th</sup> of February, 1762, a new writ is issued for Edinburgh, in the room of Mr. Lind, who had accepted the office of Conservator of the Privileges of the Scots nation in the Netherlands, and Resident there for the affairs of Scotland.

37. On the 18<sup>th</sup> of December, 1765, a new writ for Knareborough, in the room of Sir Anthony Abdy, who hath accepted the office of one of the King's Counsel learned in the law.

38. On the 26<sup>th</sup> of November, 1777, a new writ for Midhurst, in the room of Mr. Ord, who hath accepted the office of Attorney General of the Duchy of Lancaster.

39. On the 30<sup>th</sup> of November, 1779, a new writ is issued for Yarmouth, in the room of Jervoise Clarke Jervoise, Esq; who had been appointed to, and accepted of, the office of Agent to the regiment of Militia of the County of Suffex\*.

40. On the 20<sup>th</sup> of March, 1783, a new writ for Westbury, in the room of Mr. Estwick, who hath accepted the office of Secretary and Register of Chelsea Hospital.

41. On

\* This measure of vacating the seat of a Member, by appointing him agent to a regiment, was adopted in consequence of Mr. Jervoise's not being able to obtain the appointment to the Stewardship of the Three Chiltern Hundreds, or of the Manor of East Hendred; offices which of late years have

been granted by the Minister for ~~the time~~ being, for the sole purpose of vacating the seats of such Members as wished to quit their present seat in Parliament, either to be eligible for another (as was the case in the present instance of Mr. Jervoise, who intended to offer himself a candidate for the County,

41. On the 4th of July, 1783, a new writ issued for the Shire of Dumbarton, in the room of Mr. Elphinstone, having accepted the office of Chamberlain and Secretary of the principality of Scotland \*.

42. On the 14th of February, 1785, a new writ for Morpeth, in the room of Sir James Erskine, who had accepted the office of Director in Chancery in Scotland.

43. On

County of Southampton) or to withdraw entirely from Parliament.—This practice of issuing a new writ in the room of Members accepting these nominal offices, which began only about the year † 1750, has been now so long acquiesced in, from its convenience to all parties, that it would be ridiculous to state any doubt about the legality of the proceeding; otherwise, I believe it would be found very difficult, from the form of these appointments, to shew that they were offices of *profit, granted by the Crown*.

How far the appointment of Mr. Jervoise to the agency of a regiment, avowedly for no other purpose than to remove him from his present seat, was a *bona-fide* appointment, which would have been held valid upon a question that should have come to be decided by a Committee appointed under Mr. Grenville's Bill—or, Whether an agency to a *Militia* regiment, though embodied, and out of their County in actual service, can, by any construction, be included within the meaning of the Act of the 6th of Queen Anne, an Act made long before the institution of the Militia—are questions that it does not become me to discuss—the House of Commons, who had the sole right

of determining these points, having directed the writ to be issued, without any discussion or debate.—Two other similar instances having since occurred, to which no objection was made, this point (of a seat being vacated by the acceptance of an Agency to a regiment of Militia) is now as much settled as the case of the Chiltern Hundreds, or any other of those nominal offices.

\* After the writ had issued, but before it was executed, a doubt arose, Whether the proceedings upon this occasion had been regular; and whether it would not be necessary to apply again to the House of Commons for a warrant for a supersedeas to the writ, as having issued inadvertently; as had been done in the case of Mr. Willy, on the 6th of May, 1765.—(See this case hereafter, under title, 'Whether Members can relinquish.') The grounds of this doubt were, Whether this office was granted by the *Crown*; or by the *King*, as holding the principality of Scotland only during the minority of the Prince of Wales. If the latter should be the case, it was said, it would fall under the same predicament with the offices granted by the King in the Duchy of Cornwall; and which, since the determination

† The first instance I find, is in the case of Mr. John Pitt; on the 17th of January, 1750; I believe the next is on the 17th of March, 1752, in the case of Mr. Lascelles. Since that time, they have become very frequent.

43. On the 2<sup>5</sup>th of April, 1785, a new writ for the Shire of Dumfries, in the room of Sir Robert Laurie, who had accepted the Office of Knight Marishall of Scotland.

44. On the 9th of June, 1788, a new writ for Launceston, in the room of Mr. Rose, who had accepted the office of Clerk of the Parliaments \*.

45. On the 5th of May, 1791, a new writ for Lymington, in the room of Lieutenant Colonel Burrard, who had accepted the office of Riding Forester of his Majesty's New Forest. \*

46. On the 2d February, 1795, Mr. Parkyns vacated his seat for Leicester, having accepted a commission of Lieutenant Colonel † in his Majesty's army.

47. On the 11th of June, 1795, a new writ for Heltone in

tion in the instance of Mr. Morrice, on the 19th of April, 1763, had been holden not to vacate seats on their being accepted by Members. Lord Loughborough, and Mr. Wallace, then Attorney General, inclined to this opinion; but, upon inspecting Mr. Elphinstone's grant of the office, it appeared clearly to be the grant of the *Crown*; there being in it several references and directions to the Court of Exchequer in Scotland, which could not, had the Prince of Wales been of age, and in possession of the principality, have been inserted by him; and could not in the present grant be inserted by the *King*, as guardian of the principality, but must proceed from the *Crown*; and consequently this office came within the words and meaning of the Act of 6th Queen Anne, ch. 7. sect. 26.

\* The reversion of this office of Clerk of the House of Lords, had been granted three

or four years before, jointly to Mr. Strutt and Mr. Rose, and to the survivor of them, to take place after the death of Ashley Cowper, Esq. the then possessor of that office. Mr. Strutt died; so upon the death of Mr. Cowper, Mr. Rose succeeded to the office under that grant.—Mr. Rose, though Clerk of the Parliaments, was re-elected, and admitted to sit as a Member of the House of Commons.—It appears from the Lords Journal of the 22d of December, 1515, in the 7th year of Henry VIII. that John Tailer, LL. D. was at the same time Clerk of the Parliaments, and Speaker of the Lower House of Convocation, "*quod raro accidit.*"

† Mr. Parkyns had been before an Officer in the Army, but had quitted it; so was considered as if he had accepted his first Commission. See before the note, p. 50.

the room of Sir Gilbert Elliot, Vice-Roy of the Kingdom of Corsica\*.

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## OBSERVATIONS.

By the 5th of William and Mary, ch. 7, sect. 57, no Member of the House of Commons shall at any time be concerned in the collecting or managing any of the duties granted by that or any future Act of Parliament; except the Commissioners of the Treasury, and the Officers and Commissioners for managing the Customs and Excise.

By the 11th and 12th of William III. ch. 2, sect. 150, the exception in the former Act, with respect to Officers concerned in the Excise, is repealed, and such persons are declared incapable of sitting, voting, or acting as Members.

\* The king had accepted the Crown, offered him by the States of Corsica, in the year 1794, during the recess of Parliament: On the meeting of Parliament, on the 30th of December, the speech from the throne mentioned this circumstance; but no proceeding was had, or any consideration entered into, in either House of Parliament, expressing their approbation or disapprobation of this step, on the part of his Majesty.— Before the House of Commons had directed this writ to be issued, perhaps it might have been more proper, to have taken that information from his Majesty, and the instrument of the offer and acceptance, into their serious deliberation; and to have determined, how far it is, or is not, in the power of the King, to accept the Crown of any other State (from which acceptance many very important consequences must necessarily follow to the advantage or detriment of the Crown and Dominion of this Kingdom) without the previous concurrence and approbation of Parliament.

*And*



And by the 12th and 13th of William III. ch. 10, sect. 89, the same provisions are extended to Officers in the Customs \*.

By the 6th of Anne, ch. 7, sect. 25, no person who shall have in his own name, or in trust for him, any new office † or place of profit

\* By these statutes of the 5th of William and Mary, ch. 7. and 11th and 12th, and 12th and 13th of William III. the Officers and Commissioners for collecting the Revenue, and for managing the Excise and Customs, are not disabled, or declared incapable of being elected to be Members of the House of Commons. These laws only enact, "That no Member of the House of Commons shall be concerned in collecting or managing certain duties, or shall be capable of being a Commissioner, or of holding or enjoying any office or employment in managing the said duties; and that if he does enjoy or execute such office, he is declared to be absolutely incapable of sitting, voting, or acting as a Member in such Parliament."—By the subsequent laws of the 6th of Queen Anne, ch. 7, and the 15th George II. ch. 22, the persons holding the offices enumerated in those Acts, are declared incapable of being elected; and if such persons presume to sit and vote, they shall forfeit 500*l*.—This difference explains the grounds, upon which the House of Commons proceeded in their determination upon the cases of Mr. Isaacson, Mr. Montagu, Sir Richard Allen, Mr. Ongley, and Mr. Trelawney.

† On the 14th of June, 1785, upon the third reading of "the bill for better examining and auditing the Public Accounts," a doubt was suggested by Mr. Fox, Whether the Commissioners who were to be appointed under the authority of this Bill, would come within the meaning of these words of the Statute of Queen Anne, as holding a new

office, and by that be disqualified from being eligible, or of sitting in the House of Commons; or, whether they would be considered only as executing the *old office* of Auditor of the Imprest, from which Lord Sondes and Lord Mountb Stuart, the present Auditors, were removed by this bill? Mr. Pitt, Chancellor of the Exchequer, seemed to think, from some words in the bill, that it was a new office; and that therefore no clause was necessary specifically to exclude these commissioners from the House of Commons, and the Speaker was of the same opinion. But it was suggested, that, in a case very similar to the present, viz. where Mr. Maitland had, in 1774, been elected Member for the Burghs of North Berwick, &c. and a Petition had been presented against that Election by Sir Alexander Gilmour, stating that Mr. Maitland was ineligible, from his holding the office of Clerk of the Pipe in the Exchequer, which was alledged to be a new office created since the 25th of October, 1705, the Select Committee who were appointed under Mr. Grenville's bill to try the merits of that petition, had been of opinion, though the particular office under the name of *the Clerk of the Pipe* did not exist at the time of the Union, yet, because the functions of that office had been always executed in Scotland, though by an officer under another name, that this was not a *new office* within the meaning and spirit of the Act of Queen Anne, and that therefore Mr. Maitland was eligible. (See this case very accurately reported in the 2d volume of Douglass's Controverted Elections, p. 423). This consideration especially

profit under the Crown, created since the 25th of October 1705, nor a Commissioner or Receiver of Prizes, nor Comptroller of the Accounts of the Army, nor Commissioner of Transports, or of Sick and Wounded, nor any Agent for any Regiment, nor any Commissioner for Wine Licences, nor any Governor or Deputy Governor of any of the Plantations, nor any Commissioner of the Navy, nor any Person having a pension from the Crown during pleasure, shall be capable of being elected, or of sitting or voting as a Member of the House of Commons.

as it was not intended that these Commissioners should be eligible, induced Mr. Pitt to consent to a clause, which was immediately ingrossed, and added, that removed all doubts, by declaring directly, that they should be incapable of being elected, or of sitting as Members. In the course of the debate, or rather the conversation, which took place upon this subject, reference was had to the office of the Commissioners, whom the King was authorized, by the Act of 18th Geo. III. ch. 13. to appoint for treating with the Americans: This was a new office, and it was not intended to exclude Mr. Eden and Governor Johnstone, the Commissioners, from sitting in Parliament; but no clause was inserted in the bill to save them from the operation of the 6th of Queen Anne, because, upon mature consideration, it was thought that, from the nature and object of their appointment, viz. "to treat with the Americans," they were rather to be looked upon as Embassadors, and therefore coming within the decision, which the House had made on the 19th of April, 1714, upon the question of Commissaries to treat with the Commissaries of France. (See that case before in this volume, p. 23.) So in the Act of the 23d George III. ch. 80, in which Commissioners were appointed to enquire into the losses of the American Loyalists, no clause was inserted to exclude them from being

Members of the House of Commons, because they were nominated *by Parliament* in the Act, and not by *the Crown*, and therefore not thought to fall within the spirit and purview of the Act of Queen Anne.—In the bill which passed the House of Commons in December 1783, for vesting the affairs of the East India Company in Commissioners, (commonly called Mr. Fox's bill, and which was rejected by the Lords) there was no clause for securing the seats of those Commissioners who were *nominated in the bill*; but, as there was a provision that, in case of death, resignation, or removal, his Majesty might appoint another Commissioner, and as a doubt arose upon this appointment, whether it might not be considered as coming within the Act of 6th Queen Anne, as being a new office, a clause was inserted by the Committee to declare, "That such office shall not be deemed and taken to be within the intent and purview of that Act; nor that any person, so appointed by his Majesty, should be thereby disqualified from being eligible, or from sitting and voting in the House of Commons."—See the proceedings on the 11th March, 1779, on the enquiry, Whether Lord George Germain, having accepted the office of third Secretary of State, had accepted a new office within the meaning of the Act of 6th Queen Anne, ch. 7.

The persons here enumerated are rendered totally incapable of being Members; but by the 26th section, if any Member shall accept of any office of profit \* from the Crown †, his election is declared void, and a new writ shall issue; but such person shall be capable of being again elected ‡.

And by the 27th section, no greater number of Commissioners shall be constituted for the execution of any office, than have been employed at some time before the first day of that Parliament.

By the 28th section, nothing herein contained is to extend to any Member of the House of Commons, being an Officer in the Army or Navy, who shall receive any § new or other commission in those services ||.

By

\* On the 3d of May, 1751, mention was made in the House, to take their sense of the case of Members who were to be servants to the young Prince of Wales; Whether such Members vacated their seats or not? It was debated for some time, but in a loose manner, and went off without a question; which was understood to be in favour of those concerned; they accordingly accepted their employments, and continued to hold their seats in the House. Sir Dudley Ryder and Mr. Murray, the Attorney and Solicitor General, were strongly of opinion that they ought to vacate their seats, as they were to be appointed, paid, and removeable by the King; but they happened not to be in the House when the matter was stirred, and Mr. Fazakerly, an eminent lawyer, being there, and being of a contrary opinion, the House gave into that.—Mr. O.—In conformity to this precedent, when the household of the present Prince of Wales was established, in 1782, those of his servants, who were Mem-

bers of the House of Commons, did not vacate their seats.

† When Mr. Edward Walpole was made Clerk of the Pells, he continued to sit, as being appointed, not *by the Crown*, but by the Treasurer of the Exchequer: and this case was well considered at the time.—Mr. O.—So upon the death of Sir Edward Walpole, and the appointment of Colonel Barré, this latter did not vacate his seat.

‡ See what is said in a following note under this title, of the person who is supposed to have suggested this expedient.

§ When Admiral Boscawen was appointed General of the Marines, in 1759, there was a doubt, whether, the Marines being to serve at land as well as at sea, and being regimented, he, being only a Sea Officer, would not vacate his seat by such acceptance; the part of the appointment which concerned the land-service being to him, a mere Naval Officer, a new appointment, and not a promotion in the navy: But upon con-

By the 9th of Queen Anne, ch. 5, no person can be elected Member for a Borough, who has not an estate for life arising out of land of the clear annual value of 300l. above reprises; nor for a county, without being possessed of a like estate of 600l. per annum. But it is provided, that this shall not extend to the eldest son or heir apparent of any \* Peer or Lord of Parliament, or of any person qualified to serve as a Knight of the Shire. And in order to enforce the provisions of this law, it is enacted by the 33d George II. ch. 20. That, before any Member can take his seat, he shall deliver in at the table of the House of Commons a paper, containing the name of the parish and county in which the lands lie, whereby he makes out his qualification, signed by himself, and shall also swear, That he truly and *bona fide* is in possession of such estate, as described in the paper, according to the tenor and true meaning of the Acts of Parliament in that behalf: there is here also an exception to the eldest son or heir apparent of any Peer or Lord of Parliament, or of any person qualified to serve as Knight of the Shire, and to the Members for either of the Universities, and to the Members for Scotland.

By the 1st of George I. ch. 56, no person having any pension from the Crown for any term of years, either in his own name, or

consideration and consultation of the Law Officers of the Crown, and after inspection of the several documents and acts relating to this matter, it was determined, though with much doubt, that he should not vacate his seat. Mr. O.

Mr. Onslow adds, "This was the first instance of a Sea Officer having that commission; many Land Officers have had it; amongst others, Lord Peterborough and Lord Stair."

|| On the 7th of May, 1778, in a Bill depending, relating to the Militia, an instruction was given to the Committee, to pro-

vide that the seats of Members returned to serve in Parliament should not be vacated by the acceptance of a commission in any corps of fencible men in Scotland, or in any corps to be raised in Great Britain, in which the officers should not be entitled to half-pay, or to rank in the army, after their actual service.—See the 13th Geo. III. ch. 59, sect 4.—A similar law was passed in 1793, the 33d Geo. III. ch. 36.

\* The eldest sons of Peereesses in their own right, and of Bishops, as Lords of Parliament, have been always construed to be within this exception.

in trust for him, shall be capable of being elected, or of sitting or voting as a Member.

By the 15th of George II. ch. 22, no Commissioner of the Revenue in Ireland, or Commissioner of the Navy or Victualling Offices, nor any Deputies or Clerks in any of the said offices, or in the office of the Commissioners of the Treasury, or of the Auditor of the Exchequer, or of the Tellers or Chancellor of the Exchequer, or of the Admiralty, or of the Paymasters of the Army or Navy, or of the Secretaries of State, or of the Commissioners of Salt, or Stamps, or Appeals, or Wine Licences, or Hackney Coaches, or Hawkers and Pedlars, nor any person having any Office, Civil or Military, in Minorca or Gibraltar \*, (except Officers having commissions in any regiment) shall be capable of being elected, or of sitting and voting.—There is an exception for the Treasurer and Comptroller of the Navy, the Secretaries of the Treasury, the Secretary to the Chancellor of the Exchequer, and Secretaries of the Admiralty, the Under Secretaries of State, the Deputy Paymaster of the Army, and all persons holding any office or employment for life, or *quam diu se bene gesserint*.

By the 7th of George II. ch. 16, section 4, no Judge of the Court of Session or Justiciary, or Baron of the Court of Exchequer, in Scotland, shall be capable of being elected, or of sitting or voting.

And by the 22d of George III. ch. 45, no person who shall hold or enjoy any contract entered into for the public service, shall be capable of being elected, or of sitting or voting as a Member of the House of Commons.

\* See before, N<sup>o</sup> 13. p. 45.

These laws \*, which are all passed since the Revolution, shew how anxious Parliament has been, at these several periods, to diminish, as much as possible, the effect of that influence of the Crown, which, from the disposal of so considerable a number of lucrative offices and employments, might have an improper bias on the votes and proceedings of the House of Commons.

It is not a question proper for me to discuss here, where the line should be drawn, with respect to the degree of influence with which the Ministers of the Crown can safely be intrusted †. The idea, on the one hand, of excluding from the House of Commons every man who holds an office in the government of the country, and who, from that situation, is the best qualified to give the necessary information relative to the department which he belongs to ‡, is too absurd to be seriously maintained for a moment. Besides, whilst a seat in the House of Commons continues to be a desirable

\* See in the Appendix, N° 1, the substance of a conversation, which passed between the Speaker, Mr. Onflow, and Lord Egmont, in the year 1760, upon the subject of vacancies made in the House of Commons by persons created Peers.

† See this subject very well discussed, in the reasons given by the Lords at a conference upon the Bill for better securing the Succession of the Crown; in the Lords Journals, 11th of February, 1705: and inserted in the Appendix to this Volume, N° 2. See also a very good debate upon this question, in Grey's Debates, Vol. III. p. 53, on the second reading of a Bill, to incapacitate Members of Parliament from taking offices of benefit: but to allow them to be re-elected. This Bill was rejected on the 29th of April, 1675. See particularly Colonel Titus's speech, who concludes with saying, "After the long Parliament had passed the self-

denying ordinance, they never did deny themselves any thing." Sir William Coventry foretells, "That if the Bill does not now pass, it will revive in future Parliaments." This provision was revived by the statute of the 4th of Queen Anne, ch. 8, and is now in force by the statute of the 6th of Queen Anne, ch. 7, sect. 26. Whilst the Bill in the 4th of Queen Anne was under consideration in the House of Commons, the idea and expedient of rendering a Member, who should have accepted an office, capable of being re-elected, was suggested by a Mr. Eyre, who from thenceforth was distinguished by the appellation of *Expedient Eyre*. But it appears that this expedient was so far from new, that it had been adopted in 1675, thirty years before.

‡ And yet this proposition, strange as it is, was actually inserted in the Act 12th and 13th William III. ch. 2, sect. 3, by which, it

desirable object to persons of the greatest rank and largest property in the kingdom, it can never be a prudent measure to exclude men of this description from taking upon themselves the offices of Secretary of State, of one of the Commissioners of the Treasury or Admiralty, or of the Secretary at War, and by this means to discourage young men of family and fortune from acquiring that knowledge, and those habits of business, which tend to render their talents and services ornamental and beneficial to their country.—Such a measure, even to this extent, would be sufficiently mischievous; but to carry the idea still further, as some have done, and to exclude Officers of the Navy or Army, beyond a particular number, or below a certain rank, from being Members of the deliberative Council of the nation, and thereby to compel them to consider themselves as a separate body from the rest of the Gentry of the kingdom, without any other weight or consequence with the public, than what they derive from the grace and favours of the Crown, would be dangerous to the highest degree \*.—Men, who are to command the fleets and armies of a free country, ought

it was enacted, “That, after the death of King William and Queen Anne, no person who should have an office or place of profit under the King, or receive a pension from the Crown, should be capable of serving as a Member of the House of Commons.” This however never took effect, as it was soon afterwards repealed by the statute 4th Queen Anne, ch. 8, sect. 25.

\* See the observations in Macaulay’s History of England, Vol. IV. p. 160 to 171. “That the Republican Party in the House of Commons, during the civil war, who were desirous of abolishing Monarchy entirely, were unable to make head against the Presbyterians (whose object only was to destroy episcopacy, and to restrain the power of the Crown within proper bounds) until the passing of the self-denying ordinance in 1644,

by which it was enacted, “That no Member of either House should have or execute any office or command, civil or military;” by this measure departing, as the Historian judiciously observes, from that manifest rule of policy (more especially to be observed where the legislative and executive power is lodged in a popular Assembly) viz. “The retaining an inseparable connection between the civil and military powers.”—And accordingly we learn from the histories of those times, that very soon after this event took place, the Independents carried all their measures by a great majority.—See in Clarendon’s History of the Rebellion, Vol. II. p. 432 to 437, Book the 8th, the motives which led Sir Henry Vane and Cromwell to propose this ordinance: and the very artful means they took to have it enacted.

as early as possible to have a voice in the Assembly of the people ; where they may hear treated, and may themselves discuss with freedom, every question that concerns the administration of the government of the country ; and may learn to set a true value upon those laws, which, as citizens, they are bound to protect, and the excellence of which, in whatever capacity they are employed, they ought ever to love and to revere.

On the other hand, it is impossible to say, that the influence of the Crown, arising from the disposal of offices of emolument, and of commissions in the Navy and Army, may not be extended too far : However men may flatter themselves that their parliamentary conduct is regulated only by the principles of honour, and a regard for the publick service, we learn from the histories of all ages, and of all countries, as well as of our own, that the respect which is paid by the multitude to those who are attending about the person of the Prince—that titles of rank—that badges of different-coloured ribands—but, above all, that a considerable \* pecuniary addition to their income, are motives which always have had a certain weight ; and will continue to operate upon the minds of men, even of the highest rank, and of the most independent fortunes.—† During the reign of the Stuarts, the whole revenue of the Crown,

out

\* “ While interest draws one way, and honesty another ; when a man may make his fortune by forgetting his duty to his country, but shall always stick at mark while he serves it ; it is scarcely to be hoped, that men should hold out against such temptations, unless they be more gifted with honesty than the generality of mankind are.”—Preface to Molesworth’s Account of Denmark.

† There is a very curious paper entered in the Journal of the 20th of March, 1688,

of the expences of James the Second’s government, under the separate articles, from Lady-day, 1685, to Lady-day, 1688—the medium of which annually amounts to 1,699,363l.

The military establishments of this country at present, in time of peace, can never be reduced under 4,000,000l. add to this, the 900,000l. appropriated to the Civil List, and the interest of the national funded debt, which now (in 1781) amounts to near 7,000,000l. and the revenue raised annually will be above

11,000,000l.



out of which the King was obliged to keep up the establishments of the country, Military as well as Civil, was very inconsiderable. The wars which continued, almost without intermission, for near twenty years after the Revolution, induced the Ministers of the Crown to defray the expences attending those wars by making considerable loans; and, in order to pay the annual interest of those loans, taxes were necessarily imposed. The Crown, as the executive part of the Government, had, directly or indirectly, the appointment and removal of all the Officers that were necessary for the collection and management of these taxes. From hence a new system of power and influence arose, not known, or but in a very small degree, before the Revolution; which, as the necessities of the State, and with them the taxes, increased, extended itself into every part of the kingdom. To check the undue and improper effects of this influence, as well upon the electors of Members of the House of Commons, as upon the elected, the laws above-mentioned were enacted; and it is certainly at all times the duty of a Parliament, jealous of its own independence, to watch over the increase and operations of this new-acquired power in the Crown; and to take care that it be not extended too far, or exercised improperly. But, where the line should be drawn; in what instances this influence should be restrained; to what extent; and in what manner, must be determined from the particular circumstances of the time when the proposition is made\*. The principle of such an attempt is always laudable, as it has for its object the purity

11,000,000*l.* which is more than six times as much as was collected before the Revolution.—Since the first publication of this Volume, the interest of the *funded* debt is increased to upwards of 9,500,000*l.* and the annual Revenue is above 15,000,000*l.*

\* See the resolutions come to by the House of Commons on the 6th of April,

1780, respecting the increase of the influence of the Crown; and the mode which was adopted, within the next two or three years, for diminishing that influence, by several laws, for restraining and regulating the expences of the Civil List, and by excluding contractors from seats in the House of Commons.

and independence of Parliament; and there is little reason to fear, but that there will always be found persons sufficiently interested in preventing this principle from being carried into effect to such a degree, as to weaken the legal prerogatives of the Crown, and thereby endanger the balance of this most happy and most excellent constitution \*.

\* Much having been lately said and written touching alterations and improvements necessary to be made in the mode of election of Members to serve in the House of Commons, under the specious name of a "Reform of Parliament," it may perhaps be amusing to the reader to see the several plans which were suggested for this purpose after the death of Charles the First; and the different forms of government that, during the Inter-regnum, were proposed to be substituted in lieu of that which had just been abolished.—The first proposition was in a very famous Memorial, intitled, "The Agreement of the People;" in which, amongst other articles for the settlement of the nation on a new plan, it was demanded, "That the sovereign authority should be lodged in a representative assembly, composed of 400 persons, biennially elected by counties, cities, and boroughs, more equally proportioned with electors than by the present distribution, and that all the natives or denizens of England, not receiving alms, but who are assessed to the poor, nor being servants and receiving wages, should have an elective voice." (See this agreement at length, in the Parliamentary History, Vol. XVIII. p. 519.) This paper was drawn up by Ireton, whom Ludlow, and the writers most favourable to the Republican Party, represent as "the warm and invariable friend to the liberty of his country." The following character is given of him, in Macaulay's History of

England, Vol. V. ch. 1. "He penned all the declarations and remonstrances of the army; drew up that famous Agreement of the People, the establishment of which was in vain contended for by the Levellers; and to his manly and unquerable resolution was chiefly owing the justice inflicted upon the King, and the abolition of the English monarchy."—Another proposition was, "That the supreme authority should be vested in an assembly chosen by the people; and that a council of state, elected by that assembly, should be vested with the executive power; which power was to determine on the meeting of the succeeding representative assembly, to whom it was to be accountable." A third proposed "A representative of the people, constantly sitting, but changed by perpetual rotation, joined to a select committee of men, who should have a negative in things, wherein the essentials of government were concerned." A fourth, "That there should be two councils chosen by the people; the one to consist of 300, and to have the power only of debating and proposing laws; the other to consist of 1,000, and to have the power to resolve and determine."

This last form of government, says the Historian in her account of the Republic, bids fairer for the preserving of the true interests of society, than any which has ever yet been practised.—See Macaulay's History of England, Vol. V. ch. 9.

What

What the real views and objects of all these forms of government were, is best explained by a person who was himself a considerable actor upon that stage, and knew the secret springs and motives, which directed the leaders of the several parties.—Lord Shaftesbury, in a letter to King Charles the Second, says, “I saw the hand of Providence, that had led us through various forms of government, and had given power into the hands of several sets of men; but he had given none of them a heart to use it as they should.—They all fell to the prey—sought not the good or settlement of the nation; endeavoured only the enlargement and continuance of their own authority; and grasped at those very powers they had complained of so much, and for which so bloody and so fatal a war had been raised and continued in the bowels of the nation.—I observed the leaders of the great parties of religion, both laity and clergy, ready and forward to deliver up the rights and liberties of the people, and to introduce an absolute dominion, so that tyranny might be established in the hands of those that favoured their way, and with whom they might have hopes to divide the present spoil; having no eye to posterity or thought of future things.”—Locke’s Works, Vol. III. p. 497. Folio edition.

Another person of no less note, writing in February, 1648, just after the King’s death, says, “The meanest of men, the basest and vilest of the nation, the lowest of the people, have got the power into their hands; trampled upon the Crown; baffled and misused the Parliament; violated the laws; destroyed or suppressed the nobility and gentry of the kingdom; oppressed the liberties of the people in general; broke in sunder all bonds and ties of religion, conscience, duty, loyalty, faith, common honesty, and good manners; cast off all fear of God and man, and now lord it

“over the persons and estates of all sorts and ranks of men, from the King on his throne to the beggar in his cottage; making their will the law; their hair-brained, giddy, fanatical humour the end of all their actions.” Holles’s Memoirs, p. 1. The editor of these Memoirs very properly observes, “That though this work is intitled “Memoirs,” yet it is, in substance, an apology for that party who took up arms, not to destroy the King or alter the constitution, but to restore the last, and oblige the former to rule according to law.”

Another writer, a Member of one of Cromwell’s Parliaments, in a letter to his friend who was governor of Connecticut, written a few days only before the Restoration, in speaking of the Congregationalists, says, “It is not to be expressed, what reproach is brought upon the profession of religion by this means; for demonstration is made by experience, that professors were not more troublesome and factious in times of peace, before the wars of England began, than they have been imperious, self-seeking, trust-breaking, and covenant-violating, since they were invested with power.” Letter from Joseph Maidstone to John Winthorpe, Esq. in Appendix to Thurloe’s State Papers, Vol. I. p. 768.

There is a very curious paper preserved by Lord Clarendon, which serves to throw farther light upon this subject.—It is a letter written from England, in the year 1658, before the death of Cromwell, to Charles the Second, by a gentleman of honourable extraction and considerable parts, himself an Anabaptist, who had been employed by a great number of Sectarists, Anabaptists, Independents, and Quakers, to convey to the King an address, signed by several persons of this description on behalf of themselves and many thousands more.—The letter begins in this manner:

“ May it please your Majesty,

“ Time, the great discoverer of all things, has at last unmasked the disguised designs of this mysterious age; and made that obvious to the dull sense of fools, which was before visible enough to the quick-sighted prudence of wise men, viz. “ That Liberty, Religion, “ and Reformation, the wonted engines of “ politicians, are but deceitful baits, by “ which the easily deluded multitude are “ tempted to a greedy pursuit of their own “ ruin.”—In the unhappy number of these fools, I must confess myself to have been one; who have nothing now more to boast of, but only that, as I was not the first who was cheated, so I was not the last, who was undeceived.” The letter then proceeds, to describe the tempers, inclinations, and dispositions of those, who were at that time indisposed towards Cromwell’s government, “ Christian Royalists,” or “ Fifth Monarchy “ Men,” Common-wealth’s Men,” and “ Levellers,” and of whom the chief, as leaders of the rest, had signed this address to the King; and had authorised the writer of the letter to transmit it.—The address, after stating and justifying the measures taken at the beginning of the Long Parliament against the former government of Charles the First, which had provoked them to take up arms, goes on, “ Upon this account, and to this and no other end, were we at first invited to take up arms; and though we have too great cause to conclude, from what we have since seen acted, that *under those plausible and gilded pretences of Liberty and Reformation*, there were secretly managed the

hellish designs, of wicked, vile, and ambitious persons, yet we bless God, that we went out in the simplicity of our souls; aiming at nothing more but what was publicly owned in the face of the sun.—In the rest of our motions, ever since to this very day, we must confess, we have been wandering, deviating, and roving up and down, this way and that way, through all the dangerous, uncouth and untrodden paths of fanatick and enthusiastick notions; till now at last, *but too late*, we find ourselves intricated and involved in so many windings, labyrinths, and meanders of knavery, that nothing but a divine clue from Heaven can be sufficient to extricate us and restore us.”—See this address and the letter, which accompanied it, printed at length in the History of the Rebel. Vol III. p. 488 to 498, Book the 15th.

I cannot conclude this note better than in the words of a very sensible and learned writer on the constitution of this kingdom. “ If we once depart from the ancient and “ legal constitution of Parliaments, there “ will be no end of alterations.—Every “ new modeller of government hath something to offer that looks like reason, at “ least to those whose interest it is to carry “ it on: and, if no precedents can be “ found, then they appeal to a certain invincible thing called, *The Fundamental Contract of the Nation*, which, being no where “ to be found, may signify what any one “ pleaseth.”—Bishop Stillingfleet’s Works, Vol. III. p. 874.

## M E M B E R S.

XI. *Whether eligible.*

1. **O**N the 9th of November, 1605, question moved, Whether Sir Thomas Thynne, being a Burgess, may be chosen and admitted Knight of the Shire.

2. On the 5th of March, 1727, a Committee is appointed to search Precedents, in relation to a petitioner claiming a seat in the House for one place, and who is afterwards elected for another place, pending such petition; with an instruction to enquire also, where the election is controverted upon the petition of the electors.—On the 9th of April, the Committee report several instances of petitioners elected, pending their petition; and on the 16th of April, the House resolve, “That a person petitioning, and thereby claiming a seat for one place, is capable of being elected and returned, pending such petition.”

## O B S E R V A T I O N S.

A person elected and returned a Member of the House of Commons, cannot certainly, by law, be eligible for any other place, unless by the acceptance of an office, or some other act, he vacates his former seat\*.—One reason, amongst others, for this

\* At a general election, whilst the writs are executing together in all parts of the kingdom, it has been usual for the same person sometimes to be elected for two, three, or four different places; and, when the House of Commons meets, for such person to make his

this is, that, though a Member is elected by the freeholders of a County,

his election for which of these places he will serve. A particular case happened in March, 1782; upon which a doubt arose; a doubt proceeding from this practice at a General Election. On the change of Administration, a great many writs were moved at the same time, on the 27th of March, for several places; amongst the rest for the county of Surrey, and borough of Northampton.—Lord Althorpe was chosen for Northampton, on Thursday the 4th of April, and his return was brought into the Crown-Office on the 5th.—On Wednesday the 3d of April, at a meeting held to consider of a proper person to represent the county of Surrey, Lord Althorpe was nominated, and unanimously approved of; and at the election on Wednesday the 10th of April, he was elected Knight of the Shire for that county. In this interval, between the 4th and 10th of April, a doubt was started, Whether it was necessary for Lord Althorpe to accept of an office to vacate his seat for Northampton? or, Whether he might, though returned for Northampton, consider himself in the same situation as he would have been in at a General Election, and be elected for Surrey, and then in the House of Commons make his election for which place he would serve?—Several persons, and amongst those some whose opinion deserved great consideration, maintained, that there was no difference between this case, and that of a General Election; that a Member in both instances was equally elected the moment the indenture of his return was executed; and, as the established practice of the House had, in the case of a General Election, permitted a Member, though elected and actually returned for one place, to be eligible for another, the same reasoning ought to apply here; and that therefore

Lord Althorpe was eligible for Surrey, without accepting any office to vacate his seat for Northampton. And they supported this opinion by a precedent in the year 1756, where the Earl of Euston was actually elected for Boroughbridge and Bury, upon writs issued on the 4th and 14th of December, 1756, and made his election on the 8th of January following.—Notwithstanding these opinions, and the authority of this case of Lord Euston, I could not help considering this question in a different light; and was clearly of opinion, that Lord Althorpe being elected and returned for Northampton, was not eligible for Surrey, without first vacating his seat; and having stated this opinion to the Speaker, with my reasons for it, he perfectly agreed with me; and in consequence of his recommendation, Lord Althorpe did, on Monday the 8th of April, accept of the Stewardship of the Three Chiltern Hundreds, and did thereby vacate his seat for Northampton, and was without opposition elected for Surrey on the 10th. (The writ for Northampton was not moved till Saturday the 20th, upon the principle mentioned in the first note, under the next title). My reasons for holding this opinion were, That if a person was not in law to be considered as a Member, as soon as he is elected and returned, I did not see at what other period his legal existence could be supposed to commence. It could not depend upon the taking his seat; for that, being governed by accident or his own choice, might be delayed for any length of time whatever. It could not be held to be fourteen days after the return should be brought in; for the limitation of that time being arbitrary, and governed by no rule, if the House should make no limitation of time in which they would receive Petitions,

County, or the electors of a particular Borough, he becomes, when

titions, a person elected would never become a legal Member; and therefore it appeared to me, that, when a person is elected, and the indenture of return is executed, and returned into the Crown-Office, from that instant he becomes in law a Member of the House of Commons, and is not eligible for any other place. But it was urged, How could I apply this reasoning to the practice at a General Election, where, notwithstanding a person is actually elected and returned for one place, he may be afterwards elected and returned for a second, third, and fourth place, and the person so elected may sit for which of these places he pleases to chuse? All the answer I can give to this is, That there is this distinction between the writs issued for a General Election, and the writs issued pending a Session of Parliament: The writs issued at a General Election are all made *returnable* on a future, and, by law, on a distant and a certain day; and therefore within that time, though the Sheriff or Returning Officer may transmit the writ to the Crown-Office, he is not obliged to do so; nor will the law take notice of its being returned, so as to take away from a person his eligibility for any other place, till the day on which the writ is made returnable. The Sheriff is at liberty to detain the writs till the last hour; and therefore, till that hour, the law takes no notice of the return; I mean with respect to this point; for as to several other points of Privilege, Franking, &c. the person becomes entitled to these rights from the execution of the indenture; but his right of being eligible for any other place is not destroyed till the day on which the law has said, that the writ shall be returnable. This surely is very different from the other instance, where the writ is returnable immediately: in this case

the writ is completely executed upon the execution of the indenture, and is by supposition of law returned at the same moment; at which period also the existence of the Member, as a Member of Parliament, commences to all intents and purposes whatsoever. As to the Precedent in 1756 of the Earl of Euston's elections, that proceeding was certainly irregular. I find, from the returns at the Crown-Office, that Lord Euston was elected for Boroughbridge on the 10th of December; the writ for Bury was issued on the 14th of December, and he was elected for Bury on the 21st; and both writs were returned into the Office on the 23d of December. Here the Returning Officer for Boroughbridge, or the Sheriff of Yorkshire, were guilty of a breach of their duty in not making an immediate return to the writ. If they had, Lord Euston might have actually taken his seat, before the writ for Bury had been issued. I take for granted the return was purposely kept back, to answer the purpose of permitting Lord Euston to be a candidate for Bury; but surely this neglect or act of disobedience in the Sheriff of Yorkshire does not alter the law in this case. If this objection had been taken at the election for Bury, on the 21st of December, that Lord Euston was ineligible, he being already elected for Boroughbridge on the 10th, it would not have been a sufficient answer to this objection to say, That the return of that writ, though executed on the 10th, was not brought into the Crown-Office on the 21st; and that this breach of duty in the Returning Officer made an alteration in the law, and restored eligibility to a person who would otherwise have been incapable of being elected. The same objection does not appear to me to have the same force at a General

neral

when elected\*, the Representative of the whole commonalty of Great

neral Election; where the writ being upon the face of it returnable at a very distant day, no person can legally take notice of the actual execution of this writ, I mean to this purpose, before that day.—The House acquiesced in this opinion; Lord Althorpe did accept of an office, on the 8th of April, to vacate his seat for Northampton, to which he had been elected on the 4th; he was again elected for Surrey on the 10th, and took his seat in the House of Commons on the 17th; and on the 20th the writ for Northampton was issued to elect a Member in the room of Lord Althorpe, fourteen days after the former return had been brought in.

\* Every Member, as soon as he is chosen, becomes a representative of the whole body of the Commons, without any distinction of the place from whence he is sent to Parliament. Instructions, therefore, from particular constituents to their own Members, are or can be only of information, advice, and recommendation (which they have an undoubted right to offer, if done decently; and which ought to be respectfully received, and well considered) but are not absolutely binding upon votes, and actions, and conscience, in Parliament. That every Member is equally a Representative of the whole (within which, by our particular constitution, is included a representative, not only of those who are electors, but of all the other subjects of the Crown of Great Britain at home, and in every part of the British empire, except the Peers of Great Britain) has, as I understand, been the constant notion and language of Parliament. Mr. O.

Every Member, though chosen by one particular district, when elected and return-

ed, serves for the whole realm. For the end of his coming thither is not particular, but general; not barely to advantage his constituents, but the *commonwealth*; and therefore he is not bound, like a deputy in the United Provinces, to consult with, or take the advice of, his constituents upon any particular point, unless he himself thinks it proper or prudent so to do.

Blackstone, Vol. I. page 159.

Notwithstanding these authorities, it is a favorite topic with some persons, to represent the Members of the House of Commons as *Deputies* from those who send them; and therefore bound to obey the instructions, and to speak *only* the language, of their constituents. To these persons, it may perhaps be necessary to add the opinion of another writer, whose knowledge of the constitution they will not be likely to dispute. Algernon Sidney, in his "Discourses concerning Government," says, speaking of the power of Delegates, "It is not therefore for Kent or Sussex, Lewes or Maidstone, but for the whole nation, that the Members, chosen in those places, are sent to serve in parliament: And though it be fit for them, as friends and neighbours (so far as may be) to hearken to the opinion of their electors, for the information of their judgment; and to the end, that what they shall say, may be of more weight, when every one is known, not to speak his own thoughts only, but those of a great number of men; yet they are not strictly and properly obliged to give account of their actions to any; unless the whole body of the Nation, (for which they serve and who are equally concerned

" in



Great Britain, and is therefore already the legal Representative of the County or Borough, whose seat is at that time vacant.

“ in their resolutions) could be assembled.

“ This being impracticable, the only punish-

“ ment to which they are subject, if they

“ betray their trust, is scorn, infamy, hatred.

“ and an assurance of being rejected, when

“ they shall again seek the same honour.”

.Sidney on Government, sect. 44. p. 451.

## M E M B E R S.

XII. *Whether they can relinquish.*

1. **O**N the 2d of March, 1623, it is agreed, That a man, after he is duly chosen, cannot relinquish \*,

2. On the 6th of July, 1641, it is moved, That Mr. Abbot, at his own request, might decline his election, and a new Burgess be chosen in his stead; but the motion was not thought fit to be granted.

3. On

\* Serjeant Glanville, in his report of this case, says, "The question was, Whether Sir Thomas Eftcourt was eligible, against his own consent, and contrary to his desire? and it was held clearly, that he was; and that no man, being lawfully chosen, can refuse the place; for the country and commonwealth have such an interest in every man, that when, by lawful election, he is appointed to this public service, he cannot by any unwillingness, or refusal of his own, make himself incapable; for that were to prefer the will, or contentment, of a private man, before the desire and satisfaction of the whole country, and the ready way to put by the sufficientest men, who are commonly those, who least endeavour to obtain the place."

*Glanville's Reports of Election*

*Cases, p. 101.*

Formerly the Members chosen received wages from the Boroughs and Places for which they were elected. Andrew Marvell is said to have been the last person who accepted these wages, On the 3d of March, 1676, Sir Harbottle Grimstone, then Master

of the Rolls, moved for a "Bill to repeal the Statute for Wages to Knights and Burgesses of Parliament," as Sir John Shaw (his Fellow-Burgess for Colchester), had sent down a writ to receive his wages for service done in Parliament. In the debate upon this question, Mr. Powle says, "It may be true, that wages are not due, but for the days you sit here; but for those, that come from Cumberland and such remote places, they have had sometimes fourteen days allowed them; and to all the Members, *morando, redeundo, eundo*. And if wages be demanded accordingly, it will ruin many poor Boroughs. We are now estimated to have sat in this Parliament 3,000 days, which will be £.600. And the question is, Whether wages are not due in prorogations, as well as adjournments."

*Grey's Debates, Vol. IV. p. 177.*

Though it is not immediately referable to this point, I beg leave to insert here the following very curious proceeding:—Sir Richard Lloyd was chosen Knight of the Shire for the County of Radnor, and also a Burgess for the Town of Cardiff, and made his election

3. On the 13<sup>th</sup> of May, 1689, Sir Henry Monson declining to qualify himself to sit in the House, by taking the oaths and subscribing the declaration, is discharged from being a Member, and a new writ is issued in his room. See the case of Lord Fanshaw on the same day, and of Mr. Cholmly, on the 9<sup>th</sup> of January, 1689.

4. On the 3<sup>d</sup> of January, 1698, Mr. Archdale, a Quaker, being returned for Chipping Wycomb, is ready to serve, if the House will accept his declarations of fidelity, &c. instead of the oath; but on the 6<sup>th</sup> of January, Mr. Archdale coming into the House, but declining to take the oaths from a principle of his religion, the House order a new writ to issue in his room.

5. On the 29<sup>th</sup> of April, 1765, a new writ was ordered to be issued for the Devizes, in the room of Mr. Willey, deceased. On the next day, the 30<sup>th</sup>, there being a doubt whether Mr. Willey was dead, there is an order that the Messenger of the Great Seal do forbear delivering the writ till further directions; and accounts afterwards being received that Mr. Willey was alive, the House,

election to serve for Radnorshire.—A new writ went for Cardiff, and Mr. Bassett was chosen and returned; but a petition having, before the waver of Cardiff by Sir Richard Lloyd, been delivered by Mr. Thomas, claiming to be duly elected for Cardiff, and the Committee of Elections having heard the matter, and having reported Mr. Thomas, and not Sir Richard Lloyd, duly elected for Cardiff, the House, on the report, agreed with the Committee, and on the 15<sup>th</sup> of June, 1661, resolved, “That the new writ, and the election of Mr. Bassett, was void, and that the same be discharged.”

This case shews the expediency of ad-

hering strictly to what has been lately the practice of the House, not to permit Members elected at a General Election for two places, to make their election, or writs to issue in the room of Members dead, or accepting offices, till the time is expired which the House has limited for receiving petitions complaining of undue elections or returns. This practice had been departed from in the two Parliaments chosen in 1768 and 1774; but was observed and strictly adhered to in the beginning of the Parliaments which met in 1780, 1784, and 1790, though many attempts, and some from very powerful quarters, were made to break through it.

upon the 6th of May \*, order a Superfedeas to the writ to be made out †.

\* In the debate upon this proceeding, *the Lawyers*, amongst which were Mr. Fazakerley, and Mr. Wilbraham, doubted the authority of the House to order a Superfedeas; and rather recommended an application to be made to the Lord Chancellor for this purpose. But the House rejected this proposition, well knowing that every proceeding which regards the direction for issuing, suspending, or superseding writs for the electing Members to serve in the House of Commons, is solely and exclusively within their own jurisdiction. This opinion from two very considerable lawyers, (at that time the most eminent in their profession) upon a subject of Parliamentary Law, only serves to illustrate and confirm the truth of an observation, which Mr. Onslow used frequently to make, "That Common Lawyers, accustomed to the forms and practice of the Courts of Westminster Hall, know little of Parliamentary Law, or of the forms of proceeding in Parliament. Remember, young man, (speaking to new Members). I foretell, If ever you live to see a *Common Lawyer* elected into this chair, the authority and dignity of the House of Commons will from that time be absolutely destroyed."—Mr. Onslow was himself of the profession; had a proper sense of its importance, and a regard for the professors of it; and for their opinion upon subjects, on which the course of their studies had rendered them competent to give one.—See D'Ewes's Journal, p. 396, a very curious entry touching the election of Members for the County of Norfolk; in which the Lawyers of that day, the Chancellor and Judges, had taken upon themselves to determine the

legality of the proceeding; but the House of Commons, as long ago as upon the 11th of November, 1586, resolve, "That though they thought very reverently (as becometh them) of the Chancellor and Judges, and know them to be competent Judges, in their places, yet, in this case, they took them not for Judges in Parliament, in this House; for that the discussing and adjudging of this, and such like differences, only belongs to this House." This case was cited by the Commons in their dispute with the Lords, in the case of Ashby and White, on the 6th of March, 1704.—So, upon the question, that arose, on Charles the 11th's refusal to approve of Sir Edward Seymour to be Speaker, Sir Thomas Clarges says, "As for the opinion of the Long Robe, they may easily be mistaken in this matter, though they be very learned in the law; for they are not versed in the Law of Parliament; that is another thing."

*Grey's Debates, Vol. VI. p. 419.*

† See upon the 23d of January, 1628, a Warrant under Mr. Speaker's hand, for a superfedeas to discharge a writ already issued, and to issue another. See also the resolution and order of the 6th of February, 1672, for superseding all the writs issued by Lord Chancellor Shaftesbury, during the recess. And on the 19th of December, 1702, the House order the Clerk of the Crown to make out a superfedeas of a writ, which had been issued for the election of a Member for the City of Gloucester.—Indeed it was not to be expected, that Mr. Fazakerley, or Mr. Wilbraham, should be acquainted with these Precedents.

# RULÈS OF PROCEEDING

- I. *On opening the Session.*
  - II. *Members introduced and sworn.*
  - III. *Taking and keeping Places.*
  - IV. *Compelling Attendance of Members.*
  - V. *As to Members speaking.*
  - VI. *As to putting Questions.*
  - VII. *The same Bill or Question not to be twice offered.*
  - VIII. *Witnesses at the Bar, or Delinquents to receive Judgment.*
  - IX. *Peers and Persons of Rank admitted into the House of Commons.*
  - X. *Whether the House of Commons can administer an Oath.*
  - XI. *Questions on reading Journals or Papers.*
  - XII. *On Questions where Members are interested.*
  - XIII. *When the Speaker may take the Chair.*
  - XIV. *For not admitting Strangers into the House.*
  - XV. *Leave to make a Motion.*
  - XVI. *On a Division of the House.*
- 

## I. *On opening the Session.*

1. **O**N the 22d of March, 1603, it is entered, " That the first day of sitting, in every Parliament, some one Bill, and no more, receiveth a first reading for form sake."

2. On the 7th of April, 1614, after the House was returned from the House of Lords, there was read by the Clerk, by the direction of Mr. Speaker, ' according to the usual manner,' a Bill.

3. On

3. On the 3d of February, 1620, it is said, the Bill is read as a matter of course, and form used in former Parliaments. So on the 21st of February, 1623.

4. On the 21st of March, 1663, the King's speech reported, and other business done before the Bill was read. So on the 24th of November, 1664; and on the 9th of April, 1713.—See the 20th of January, 1725.

## O B S E R V A T I O N S.

The question, Whether it is of necessity, that, at the meeting of the House after a prorogation, a Bill should be read for the opening of the Session, before the report of the King's speech, or before the House proceed on any other business, was very much agitated on the 15th of November, 1763; when, as soon as the Members were sworn at the Table, Mr. Wilkes, and Mr. Grenville then Chancellor of the Exchequer, arose in their places, the first, to make a complaint of a breach of privilege, in having been imprisoned, &c.: and Mr. Grenville, to communicate to the House a message from the King, which related to the Privileges of the House; the Speaker at the same time acquainted the House, that the Clerk had prepared a Bill, and submitted it to them, whether, in point of form, the reading of the Bill should not be the first proceeding towards opening the Session. A very long debate ensued, which of these three matters ought to have the precedence, and at last it was carried in favour of the Bill\*.

\* So on the 15th of February, 1676, a very long debate arose upon the same question, Whether in point of form, it was not regular

to read a Bill towards opening the Session.— See Grey's Debates, Vol. IV. p. 64, particularly Sir John Birkenhead's speech, p. 68.

Notwithstanding this decision, and the arguments (some very extraordinary ones) that were used upon that day, the custom of reading a Bill immediately on the return from the House of Lords, is probably nothing more than a claim of right on the part of the Commons, that they are at liberty to proceed, in the first place, upon any matter which they think material, without being limited to give a preference to the subjects contained in the King's speech \*. If this is so, the House might certainly have proceeded, and very regularly, either upon the King's message, or Mr. Wilkes's complaint, before they read the Bill. And whoever will examine the Journals accurately, will find several instances, where other business has been done, before the Bill is read. The reading of the Bill is "for form sake," and may be suspended till after other matters, if the House shall think the consideration of those matters of greater importance †.

\* See further upon this subject, in this Volume, under title "King opens the Session."

† But, in the House of Lords, it seems settled by one of their Standing Orders,

"That at the beginning of the Session, after prayers said, some Bill, *pro forma*, is to be read; then his Majesty's speech is to be reported; and then the Committee of Privileges to be appointed."

## RULES OF PROCEEDING.

### II. *Members introduced and sworn.*

1. **T**HE Parliament having been prorogued, from the 10th of April 1563, by six several prorogations, to the 30th of September, 1566, without sitting to do business—On the 3d of October, 1566, arguments \* were used, touching the oath to the new Burgeses, as in the last Session; and on the 4th of October, Mr. Vice Chamberlain declared, “ That the Deputy to the Lord Steward, by the constitution of the Queen’s Majesty’s Household, is taken to be Mr. Treasurer, or Mr. Comptroller; and the oath to be taken before one of them.—And, that the Queen’s Majesty hath appointed Mr. Comptroller to take the oath of the Knights and Burgeses, as Lord Steward for that purpose.”—The practice however since has uniformly been, for the Lord Steward, by a deputation under his hand, to authorize certain persons to execute this part of his duty.

2. On the 16th of January, 1580, several Members returned could not take their seats, there being then no Lord Steward named or appointed, who could administer the oath of Supremacy.—They attended again on the 17th of January, and on the 18th the Lord Lincoln, the Lord Steward, came into the House, and administered the oath to some, and then made his deputation.

3. On the 16th of February, 1623, whilst the Members were swearing, news was brought, that the Lord Steward had died

\* See D’Ewes’s Journal, p. 122.



## 80 RULES OF PROCEEDING.

suddenly; “whereby, the Journal says, the power of deputation  
“ceasing, they did then forbear to swear any more.”

4. On the 29th of November, 1641, the House address the King, to appoint a Lord Steward of his Household; “for that  
“this House is deprived of divers Members, by reason there is no  
“Lord Steward, to give or authorize the giving of the oaths of  
“Allegiance and Supremacy.”

5. On the 19th of May, 1685, the hour of the day ‘being  
‘elapsed’ for taking the oaths, and subscribing the declaration,  
the House adjourned.

6. On the 23d of February, 1688, resolved, that the antient\*  
order be observed, “That upon new Members coming into the  
“House, they be introduced to the Table between two Members,  
“making their obeysances as they go up, that they may be the  
“better known to the House.”

7. On the 7th of November, 1713, the Lord Steward makes  
a deputation of several ‘Lords’ and others, for administering the  
oaths to the Members, before they come into the House of Com-  
mons; and on the 16th of February, he makes another deputa-

\* This order was certainly understood, at the time of the renewal of it, in 1688, to extend to persons who came in upon petitions, though chosen originally at the General Election; as may be seen from the entries in the Journal of the 4th of March following, relating to Sir Robert Rich, Sir Philip Skippon, and Mr. Vincent: but for many years past, the constant practice has been for such persons not to be introduced; and to confine the order to persons chosen upon

vacancies that happen after the General Election; and so it was said by several antient Members, and acquiesced in by the House, on the 4th of March, 1736, in the case of Captain Cornwall, who was not introduced. Mr. O.

This practice of not introducing Members chosen at the General Election, and coming in upon petition, is now constantly adhered to.

tion for the same purpose. So previous to the Meeting of the Parliament in 1698, the Lord Steward makes two deputations, the first on the 19th of August, and the other on the 29th of November.

8. On the 8th of January, 1716, the Duke of Kent makes a deputation in the middle of the Parliament; so does the Duke of Argyle, on the 13th of February, 1718.

9. In the course of the Parliament, which met on the 31st of October, 1780, there were several Lord Stewards; each of whom executed a deputation to swear the Members, immediately after his appointment to that office \*.

## OBSERVATIONS.

By the 5th of Elizabeth, ch. 1st, section 16th, all Members, before they come into the Parliament House, are to take the oath of 'Supremacy' before the Lord Steward for the time being, or his Deputy or Deputies, for that time to be appointed †

By

\* After the inconveniences which were experienced in 1580, and on the 16th of February, 1623, and in 1641, and on the demise of George II. on the 26th of October, 1760, is it not rather extraordinary, That the possibility of a Member's being precluded from taking his seat in the House of Commons, should be suffered to depend upon the existence, or the act, of an officer, appointed by the Crown? And where is the necessity

of now continuing this practice, as the same oaths, that are administered by the Lord Steward, or his Deputies, under the Acts of Queen Elizabeth and James I. are, by subsequent Statutes, directed to be taken again at the Table?

† There is no particular place set apart for the Lord Steward's performing this ceremony.—It used to be in a room, that was called "The Court of Wards."—Since that was

By the 7th of Jac. I. ch. 6th, section 8th, the oath of ' Allegiance ' is, in like manner, ordered to be taken by Members, before they come into the House.

By the 30th of Charles II. statute the 2d, every Member is to take the oaths of Allegiance and Supremacy, and make and subscribe the declaration against Transubstantiation, \* between the

was taken down, it has been indifferently in any of the Committee Chambers. On the 4th of June, 1660, it appears that the Duke of Ormond came into the Lobby, at the door of the House of Commons, where, a table being set, and a chair prepared, his Lordship gave the oaths of Supremacy and Allegiance to several Members of the House. —Nor is it necessary, that the Lord Steward should be personally present, at the meeting of a new Parliament. On the 17th of October, 1679, and the 21st of March 1680, several Lords deputed by the Duke of Ormond, then absent, administered the oaths. See also the 2d of November, 1761. — Though the Parliament elected in 1722 was summoned and did actually meet on the 10th of May, but were prorogued by writ, and so continued by several prorogations till the 9th of October, it does not appear that the Lord Steward came himself or issued any commission for the administering the oaths until the said 9th of October. The same circumstance occurred in 1727: The Parliament was summoned to meet, and did meet on the 28th of November, 1727, but were prorogued by writ to the 11th of January, and from thence again to the 23d of January, when they met for the dispatch of business; and the Lord Steward does not attend, nor issue any commission till the 23d of January, 1727. See also the 13th of June, and 14th of January, 1734; and the 25th of June and 1st of December, 1741; and the 13th of August, and 10th of November, 1747; and the 19th of May and 2d of November, 1761,

—and the proceedings of the Parliament summoned in 1790.

\* At the beginning of the Parliament which met in October, 1780, there was some debate in the House of Lords, whether any Lord might, notwithstanding the limitation of time so plainly expressed, be admitted to take the oaths, and sign this declaration, ' after four o'clock; ' and the Lords determined that he might. — The House of Commons, by their uniform practice, have always determined differently. — It must be taken for granted, that the Legislature had some reason for inserting this limitation of time; more especially, because it is re-enacted in the statute of the 1st William and Mary, chap. the 1st, and in the statute of the 13th William III. ch. 6th. — The determination of the Lords in October, 1780, was the more remarkable, as their Lordships have an order, " That Lords who come to take the oaths, " be present for that purpose, at the first " sitting of the House; or otherwise to withdraw from the debates for that day." This order, on the 31st of March, 1707, the Lords resolve ought to be observed. On the 5th of April, 1707, several of the standing orders of the House of Lords, respecting the observation of decency and regularity in their proceedings, are recapitulated; and ordered to be strictly and punctually observed. — and the Lord on the Woolfack is directed, when any of these orders are not observed, to stop the business in agitation, until these orders are complied with.

hours of nine in the morning and four in the afternoon, 'at the Table,' in the middle of the House of Commons, while the House is sitting, with the Speaker in the Chair \*.

By the first of William and Mary, ch. 8th, the oaths of Allegiance and Supremacy are altered, and others substituted in their room.

By the 13th of William III. ch. 6th, section 10th, every Member is to take the oath of Abjuration 'at the Table,' in the same manner, and between the same hours, as he takes the oaths of Allegiance and Supremacy, by the 30th of Charles II.

By the 33d of George II. ch. 20th, every Member (except as is therein excepted) is, before he presumes to vote in the House of Commons, to take the oath of his being qualified, and to deliver in his qualification 'at the Table †.'

Such Members as are elected at a General Election are not introduced; but, as soon as they have been sworn out of doors, before the Lord Steward, or one of his Deputies, they come up to the Table, and there take the oaths appointed, and subscribe the declaration. But when a Member is elected on a writ issued after the General Election, such Member must be introduced by two

\* See on the 27th of February, 1769, what Mr. Wilkes suggests to the House on this subject, when he, having been elected Member for Middlesex, is brought to the Bar *in custody*, and the directions of the House thereupon.

† Notwithstanding all these laws, which are introductory to a Member's taking his seat in the House, a person, when returned, is, though he should not have taken his seat,

to all intents a Member, except as to the right of voting, and is entitled to the same privileges as every other Member of the House. Infomuch, that upon the 13th of April, 1715, the House determine, "That Sir Joseph Jekyll was capable of being chosen of a Committee of Secresy, though he had not been sworn at the Clerk's Table."

other Members, and is brought up from the Bar, making three obeysances to the Chair; and this in order, as it is expressed in the rule of the 23d of February, 1688, "that the Member may be known to the House."

It appears to have been the practice, and it is certainly right, if a new Lord Steward is appointed in the middle of a Parliament, for him to make a deputation; in order that Members, taking their seats after his appointment, may be sworn under such deputation, and not under that of his predecessor. I take notice of this, because, from inadvertence, this has not always been observed:—Indeed great inconveniency arose from the neglect of it, upon the demise of George II. The Duke of Rutland, the then Lord Steward, being at a considerable distance from town, and there being no deputation existing, signed by him, for enabling other persons to administer the oaths to be taken to George III. the Speaker and several Members met upon Sunday the 26th of October, 1760, and upon Monday and Tuesday in what was then called "The Court of Wards," but, from not being sworn, could not take their seats in the House of Commons, or proceed to any business\*.

The limitation of time, by the 30th of Charles II. and by the Act of the 13th of William III. for Members to be sworn in the House, being from nine o'clock till four, is, † I apprehend, the reason for the Speaker's continuing to sit in the Chair till four o'clock, though it should have appeared, by a division or otherwise,

\* See further upon this subject in a note, in a subsequent part of this volume, under title, "Rules of the House, as to putting Questions."

† This is not merely my conjecture; I

have frequently heard Mr. Onslow assign it as his reason for continuing in the Chair till four o'clock, when there were not forty Members present.

that forty Members are not present. It is also for the same reason, that if forty Members do not appear before four o'clock, the Speaker waits till that hour, and then takes the Chair, and adjourns the House.

When a Member appears to take the oaths, within the limited time, all other business is immediately to cease, and not to be resumed till he has been sworn and has subscribed the Roll \*.

\* Sir John Leech, having sat in the House, not having taken either of the oaths, as he was bound to do by the Statutes, went out of the House to the Lord Steward's Deputies, desiring to have the oath ministered unto him; but they first asking him, Whether he had sat in the House or no this Parliament? whereto he answered, He had; and then they demanding, Whether he had taken the oath in part, or none at all? he said, None at all; they forbore to give him the oath till they had first acquainted the House with it, which they did.—A debate arose, in which Mr. Crewe said, "Sir John Leech cannot serve in Parliament, for then the House should dispense with an Act of Par-

liament, which saith, He who sitteth in the House unsworn, shall be accounted as a man not elected or returned."—Sir John Leech was then called to the Bar, where he kneeled; and then, being bid stand up, he confessed he had sat in the House a quarter of an hour, on Wednesday morning last, being unsworn. He was therefore disabled to serve in this House for this Parliament, and a new writ was sent forth by course, not order.—Parliamentary Debates in 1620-1, Vol. I. p. 30.

This transaction was on the 10th of February, 1620.—The oaths alluded to were the oaths of Allegiance and Supremacy.

# RULES OF PROCEEDING.

## III. *Taking and keeping Places.*

1. **O**N the 25th of April, 1626, a motion is made against leaving of gloves, &c. for keeping of places.

2. On the 26th of November, 1640, neither book nor glove may give any man title or interest to any place, if they themselves be not ' here ' at prayers.

3. On the 10th of February, 1698, ordered, That every Member of this House, when he comes into the House do take his place, and not stand in the passage as he comes in or goes out, or sit or stand in any of the passages to the seats, or in the passage behind the Chair, or elsewhere, that is not a proper place.—On the 16th of February, 1720, this order is read, on receiving the report from the Committee of Secrecy, as a standing order in force.

4. On the 10th of March, 1734, a complaint being made to the House, that places were kept in the House for Members who were not at prayers, by laying papers for that purpose ; it is declared, that no Member is to keep any place in the House, by book, glove, paper, or otherwise, till after prayers, and then only for himself.—On the 13th of March, this is declared not to extend to a Member who takes a place by and for himself only, before prayers, and leaves a book, glove, paper, or other mark of the same, provided such Member be at prayers.—On the

16th of March, 1737, these resolutions were read; and on the 29th of January, 1741, they were ordered to be printed in the Votes of that day; and again, on the 9th of December, 1755.

## OBSERVATIONS.

Disputes have often arisen, where a Member, having by himself taken a place before prayers, and left a book or glove in the place, and not being 'in the place' at prayers, but coming in during prayers and finding another Member in his place, which of the two has the right to the place. It is said on the one hand, that the rule of the House is, that the Member is to be at prayers, and that this cannot be known, unless he is in his place; to which it is answered, that it is not necessary the Member should be there at 'the beginning' of prayers; that, having left a token in the place, it is his, till he has forfeited it by not being present in the House during any part of the prayers; and that no Member is entitled to remove that token, or to take his place, till prayers are over; because a Member, coming into the House after prayers are begun, ought to make as little disturbance as possible, and kneel down as close as he can to the door; and that it would be hard to lose his place, because he comes in but a moment after prayers are begun. There has never been any \* determination of the House 'upon this important question;' but I rather believe the latter to be the true doctrine, and to have been the opinion of the oldest Members, as to the practice.

\* The mentioning any thing upon this subject must appear ridiculous, to those who have not been witnesses to many and very serious debates upon it.



It is the constant practice, that Members lose their right to their seats by attending the Speaker to the House of Lords, when sent for by message from the King; which ought not to be, because it discourages them from doing this part of their duty. The right to seats is also lost on a division (except by the Tellers) which often makes it material, in questions otherwise indifferent, which side are to go out.

It is commonly understood, that Members who have received the thanks of the House in their place, are entitled to that place whenever they come to the House, at least during that Parliament; and it is generally allowed them by the courtesy of the House.

On the opening of a Parliament, the four Members for the City of London claim a right of sitting on the lower bench, on the right hand of the Speaker, and generally exercise it; at other times, this is called the Treasury Bench, (and, as appears from the antient Journals, used to be reserved for Privy Counsellors) \* and is now, by the favour of the House, left for the Lords of the Treasury, and other Members in great offices, who are supposed by their avocations to be prevented from coming down to take places for themselves: But this too is matter of courtesy, and not of right. I have heard that Mr. Pulteney, when in the height of opposition to Sir Robert Walpole, always sat on the Treasury

\* When Mr. Holles was questioned before the Privy Council, on the 4th of March, 1628, just after the dissolution of the Parliament, "Wherefore he, contrary to his former use, did that morning that the tumult was in the House of Commons place himself *above divers of the Privy Counsellors*, by the Chair?" He answered, "That he

"had, at some other times, as well as then, seated himself in that place; and as for his fitting *above the Privy Counsellors*, he took it to be his due, in any place where-soever, unless at the Council Board."—Parliamentary History, Vol. VIII. p. 354.—Mr. Holles was the second son of the first Earl of Clare.

**Bench.** Of right, no Member can claim any other seat than what he has taken at prayers, or finds vacant afterwards, on his coming into the House: it is, however, frequently allowed to Members who have passed through the great offices, to keep the same seat, without being put to the inconvenience of coming down to take it; as in my memory, Mr. Pitt, Mr. Fox, Mr. Grenville \*, and several others.

\* I speak here, as well of the fathers, as of the sons; and it is remarkable, that the same time, though at different periods, have both the three most considerable and leading Members of the House of Commons.

# RULES OF PROCEEDING.

## IV. *Compelling Attendance of Members.*

1. **O**N the 5th of November, 1549, it is ordered, That the Parliament Roll be called over on Saturday next. And on Saturday, the 9th of November, the Parliament Roll was read \*.

2. On the 9th of December, 1549, 22d of February, 2d and 3d of March, 1552, Members have leave to absent themselves, on various pretences; and so on the 22d of February, 1557, and throughout the reign of Queen Mary.

3. In the year 1554, several Members seceded from the service of the House; for which, it appears from the 3d<sup>d</sup> volume of the Parliamentary History, p. 334, and 358, that an † information was filed by the Attorney-General, in the Court of King's Bench; to which some of them submitted, and were fined; the rest traversed, and judgment was prevented by the Queen's death.

4. On the 18th of March, 1580, ordered, that such Members as shall depart without licence be fined, over and above the loss of their wages; and none to depart without the leave of the Speaker.

5. On the 26th of March, 1606, debate about the method of sending for Members absenting themselves without leave.—See

\* This is the first instance, that appears on the Journals, of the House being called over.

† See the form of this information in

Coke's 4th Inst. page 17, with the names of the Members, against whom the said information was filed.

the 31st of March, and 2d and 3d of April. On the 9th of April, 1606, the House is called over, and every man present stood up, upon the calling of his name; and there were found, in the House, 299, and in the House and town, 367; many excuses made, some for sickness, some for the King's service, and some for other occasions.

6. On the 27th of February, 1606, after much debate, it was resolved, that the House should be called over; \* and such as absented themselves without leave, or just cause of excuse, should be sent for by the Serjeant, and answer as in breach of Privilege.—On the 9th of June, 1607, the House is called by the general book of names, in order as they were set down by the Clerk of the Crown, at the beginning of the Parliament †.

7. On the 16th of May, 1614, the first instance I observe of the Serjeant being sent with the Mace for the Lawyers.—See the 19th of April, 1621, and 27th of January, 1661.

8. On the 7th of March, 1676, Serjeant Maynard sent for in custody of the Serjeant, for going the circuit without leave of the

\* See on the 8th of November, 1558, a particular instance, where the House was called over, at the time the Speaker was ab-

sent by leave of the House.

† The manner was, as stated in the Journal,

“The Clerk calleth every man by his name; the party called (if he be present) riseth up, bare-headed, and answereth.—If he be absent, he is excused by some in the House, and noted absent, for some special reason expressed, as the truth is, by these words,

*Licentiatur :*

*Excusatur ex gratia :*

*Ægrotat :*

} } *Speciale servitium Regis :*  
} } *Vice-Comes :*  
} } *Major :*

If no man excuse him, then is noted upon his head, *Defect*;

The names of the Deficients to be presented to the House to-morrow.”—

—On the 4th of December, 1740, no future time is given for calling over the names of the Defaulters; but, those who did not attend, or were not excused, on the first call,

were ordered to be taken into custody; and another call of the House was immediately ordered for the 19th of January.

House. See the 11th of December, 1678, where fourteen Members are ordered into custody for the same offence, of departing without leave.

9. On the 8th of March, 1692, a Committee, who had been appointed to search Precedents for what the House had done, in cases where any of their Members have been employed in foreign service, beyond the seas, or, where any Members have been otherwise absent from the service of the House, make a report.— And the House taking into consideration “ That Mr. Culliford, a “ Member of this House, having been accused of several misdemeanors, and been ordered to attend in his place; and having “ neglected the same,” They resolve, “ That Mr. Culliford be “ suspended from the benefit of the privilege of this House, until “ he shall attend in his place.” On the 13th of March, Mr. Culliford, who had been in Ireland, as appears from the Serjeant’s report on the 24th of February, and first Commissioner of the Revenue there, attends in his place..

10. On the 27th of February, 1732, the House resolve they will proceed with the utmost severity against such Members as shall not attend; and this is inserted in the Speaker’s circular letter.

11. On the 10th of May, 1744—See the report and resolutions of the Committee appointed to consider of a method of enforcing an earlier and more constant attendance on the service of the House.

12. On the 4th of December, 1761, several resolutions were reported from a Committee appointed to consider of methods to enforce

enforce a more early and constant attendance of Members: but, as soon after as the 21st of the same month, it was found necessary to dispense with the observance of these orders.

## OBSERVATIONS.

It is a common proceeding, when the House is going upon very important business, to send the Serjeant with the mace into Westminster Hall, and the places adjacent, to summon the Members to attend the service of the House; and this is almost universally done, when the House is to be called over; and by the Act of the 10th George III. ch. 16th, sect. 4th, it is directed to be done previous to the taking into consideration a petition relating to a controverted election.

When it is observed that Members stay in the country, and absent themselves from the business of the House, it is usual to order the House to be called over; and sometimes the Speaker is directed to write circular letters to the Sheriffs, to summon the Members to attend, copies of which are always entered in the Journal\*: It is also not uncommon to order, "That no Member shall go out of town without leave of the House; and this to be obtained by motion in the House."

\* On a call of the House on the 26th of May, 1675, Sir Thomas Clarges says, "In Chancery, when people do neglect their trusts, other trustees are chosen. 'This of serving here is so great a trust, that I pro-

pose, letters should be sent to the several Counties and Boroughs, to give them notice, how they are represented."

*Grey's Deb. Vol. III. p. 185.*

There is an Act of Parliament of the 6th of Henry VIII. ch. 16th, upon this subject, which may be said to be obsolete, as the penalty inflicted by it has now no longer any existence; by that Act, every Member who absents himself, without licence, from the House, and that licence to be entered of record in the Clerk's book, shall lose his wages; and the place for which he serves shall be discharged of the wages against the said person and his executors.

It has not been customary, of late years, to enforce the calls of the House, by taking Members, who do not attend, into custody of the Serjeant; in the twenty years that I have attended at the Table, there has not occurred a \* single instance; although at the time of ordering the call, there is always a resolution come to, “ that such Members as shall not attend at the time appointed, be taken into custody.”—It does not become me to determine, how far the lenity of the House, in admitting every trifling excuse that is offered, conduces to the end for which this form was instituted, viz. the producing a full attendance of Members on the publick business—or, whether it would not be more prudent not to order a call, than to make it nugatory, by not enforcing it. Notwithstanding the great anxiety, trouble, and expence, which many persons put themselves to, to obtain a seat in the House of Commons, it is inconceivable how many of these very persons neglect their duty, by not attending and taking a part in the business that is depending; and with what difficulty they are prevailed upon to give up their amusements, and other less important avocations, for this, which, whilst they continue Members, ought to be their first and principal object.—This indifference about what is passing in the House of Commons, and the difficulty of procuring a numerous attendance of Members, has further and much worse consequences

\* Since this was written, one instance has occurred, in the case of Mr. Roberts, Member for Taunton, on Thursday, the 15th of February, 1781.

than at first appear: The controul, which the independent Members of the House ought to have over the conduct of Ministers, is entirely lost; and the direction and detail of the measures of Government are left, without attention or examination, to those in whose official department they happen to be.—It is therefore the duty of the House of Commons, especially in times of difficulty, to compel the attendance of Members, by \* frequent calls; and not to permit the indolence of some, the inattention of others, or the love of amusement in many, † to leave the most important and interesting questions to be discussed and decided upon, in Houses not consisting of half the number of Members that ought to be present on such occasions.

\* It has not been unusual, to order more than one call in the same Session, and even to carry this order into execution; as may be seen by referring, amongst other instances, to the 16th of March, 1720, and the 15th of May, 1721.—22d of January, and the 16th of February, 1730.—20th of February, and the 5th of March, 1738.—17th of February, and the 7th of April, 1773.—14th of February, 1785.—In the Session beginning in November, 1781, a call of the House had been appointed for the 31st of January, but just before the adjournment for the Christmas recess, business of great importance being expected to come on earlier, another call was appointed for the 21st of January, without discharging the former; so that the orders for both the calls subsisted at the same time.

† It appears from the reports of the 10th

of May, 1744, and of the 4th of December, 1761, how inadequate every measure has been, that has been hitherto proposed, to prevent this evil: nothing can correct it entirely, but a sincere desire in the Members themselves to attend to that duty, for which they were elected and sent to Parliament.—See the 12th and 13th of May, 1664.—Cicero in the 3d Book de Legibus, ch. 4th, cites the following law, *Senatori, qui nec aderit, aut Causa aut Culpa esto*; for which he afterwards assigns this excellent reason, “Nam gravitatem res habet, cum frequens Ordo sit.” In the same chapter, he gives another recommendation to a senator when speaking: “Ut modo, ne sit infinitus; nam brevitatis in sententia, senatoris magna laus est.”



# RULES OF PROCEEDING.

## V. *As to Members speaking.*

1. **O**N the 2d of May, 1604, two Members rising to speak, and it being doubtful which stood up first, it was put to the question, "as the manner often is in the like case," and over-ruled for Sir Francis Hastings.

2. On the 9th of May, 1604, Sir R. Litton offering to speak, it grew to question, Whether he should speak any more in this matter; and over-ruled that he ought not.—See the question on Mr. Percivall, 21st of April, 1610.

3. On the 14th of May, 1604, Sir Francis Bacon having spoken twice, offered to speak a third time; and over-ruled, 'upon question,' that he might speak again in the same matter, to expound himself.

4. On the 4th of June, 1604, agreed for a rule, That if two stand up to speak to a Bill, he against the Bill (being known by demand or otherwise) to be the first heard.

5. On the 3th of June, 1604, a Member offers to speak after the question put, and the voice given in the affirmative; which was admitted for orderly, because no full question without the part negative\*. So on the 17th of May, 1606, it is said  
a man

\* On the 27th of January, 1789, upon the question, for appointing a Committee to attend the Prince of Wales with the resolutions, which had been agreed upon by both Houses, relating to the Regency, whilst the Speaker was putting the question Sir Wil-

liam Dolben rose to speak; but the Speaker, not seeing him, proceeded to put the question, both in the affirmative and negative; and declared, that the ays had it.—But several Members rising to speak to order, and informing the Speaker, that Sir William Dolben

a man may speak after the affirmative question, and before the negative.

6. On the 23d of June, 1604, agreed for a rule, That if a Bill be continued in speech from day to day, one man may not speak twice to the matter of the same Bill. So on the 21st of April, 1610 \*.

7. On the 20th of March, 1620, when divers stand up to speak, Mr. Alford says, "The House, and not the Speaker, are to determine it;" but Sir G. Moore says, "The Speaker is to determine, if he sees both when they arise." And in page 200, of volume the 1st, of the Debates of this Parliament, it is entered to be the antient order of the House, "that the Speaker may not name (when it is difficult to tell which of two Members stood up first to speak) which of the two was first up, or shall speak first; but it must be put to the question, which of the two was first up."

8. On the 24th of April, 1621, Sir Francis Seymour, offering to reply, was interrupted by Mr. Speaker, because against the

Dolben had risen and offered to speak, before he had put the question, the Speaker said, "That the order of the House was, that any Member might speak, after the question put, and voice given in the affirmative, but not after the voice given in the negative; and that therefore if Sir William Dolben had offered to speak before the voice given in the negative (though from his sitting at the bottom of the House, the Speaker had not seen him, and therefore not called to him) he was certainly yet at liberty to speak;" he therefore called upon Sir William Dolben

to know, at what time he rose to speak, Whether before the voice given in the negative? To which Sir William Dolben answering, that he offered to speak, even before the voice given in the affirmative.—The Speaker said, he had then a right to speak; and accordingly he called to Sir William Dolben to proceed.

\* But see the instances of leave given to Mr. Noy, on the 9th of May, 1626, and to Mr. Broderick on the 16th of July, 1660, to speak again, on resuming an adjourned debate.

order of the House to speak twice in one day ; which is for avoiding replies, and spending of time, and to avoid heat.

9. On the 25th of March, 1626, an ingrossed clause was offered at the third-reading of a Bill ; and Mr. Banks having upon the second reading of the clause spoken to it, and the proviso being read a third time, he offered to stand up again and speak ; and was by divers interrupted, because he had spoken before ; but resolved by the House, That upon a new reading, he may speak again.

10. On the 21st of May, 1628, much question whether Mr. Selden might, upon the adjournment of the debate, speak again ; at length he was specially licensed by the House.

11. On the 16th of July, 1660, on question, That Sir R. Ashton have leave to speak again, it passed in the negative ; but on the same day leave is given to Mr. Broderick to speak a second time, on an adjourned debate.

12. On the 1st of December, 1669, Lord Orrery (who was at this time Member for Arundell, in Suffex, but in custody of the Serjeant) was admitted to give in his answer to articles, sitting in the House, being infirm, and unable to stand.

13. On the 13th of March, 1728, in the Committee Book, on the petition of the American merchants, there is a question put, ' That Mr. Earnard do now speak ; ' and carried in the negative, upon a division.

14. On the 12th of March, 1771, see the proceeding on a question, Whether Mr. Onslow or Colonel Barré should speak first.

first. So on the 20th of March, 1782, Whether Lord North, or the Earl of Surrey should speak first.—See the 19th of December, 1783, a similar dispute, between Mr. Dundas and Mr. Baker.

## O B S E R V A T I O N S.

It is essential to the dispatch of business, that the rule and order of the House, “ That no Member should speak twice to the same question,” should be strictly adhered to \* ; and it is the duty of the Speaker to maintain the observance of this rule, without waiting for the interposition of the House ; which, in calling to order, seldom produces any thing but disorder. Notwithstanding all the care possible, it will happen that, under pretence ‘ of informing ‘ the House of a fact,’ or ‘ of explaining ’ where he has been misunderstood, a Member will break this order, and speak twice ; this entitles others to the same indulgence ; and it is to this, more than to any other cause, that the House is kept sitting in debate so much later than it formerly used to be ; since, even in my memory, Mr. Onslow kept this order tolerably strict. It is to allow more ample and frequent discussion than this order will ad-

\* On the 9th of May, 1626, the “ ancient ” order of the House of Lords was read, “ No man is to speak twice to a Bill “ at one time of reading it, or to any other “ proposition, unless it be to explain himself “ in some material point of his speech ; but “ no new matter ; and that not without the “ leave of the House first obtained.” And it was further ordered “ That if any Lord “ stand up, and desires to speak again, or

“ to explain himself, the Lord Keeper is to “ demand of the House first, Whether the “ Lord shall be admitted to speak or not ? ” And it was also resolved, “ That none may “ speak again to explain himself, unless his “ former speech be mistaken, and he hath “ leave given to explain himself.—And if “ the cause require much debate, then the “ House to be put into a Committee.”—See also Lords Journal, 31st of March, 1707.

mit, that a Committee is instituted, where every Member may speak as often as he pleases.—If a new motion is made, pending the former motion, as ‘to adjourn,’ or by way of amendment, or for the previous question, this entitles every Member to speak again; the strict observance therefore of this rule, so highly necessary to the dispatch of business, must, after all, very much depend upon the good sense and modesty of the Members themselves, not to obtrude their speeches unnecessarily and disorderly on the time and patience of the House. It appears from the antient instances, that it was sometimes thought necessary even to take the sense of the House, by a question, upon this order; but I do not find any thing of this sort in the Journal later than the case of Mr. Broderick \*.—It often happens that, two Members rising nearly at the same time, the House do not immediately acquiesce in the Speaker’s decision of which was up first, and it appears that this has formerly been determined by a question; indeed, if it is insisted on, this must always be the case; for the Speaker’s first calling upon any Member does not entitle that Member to speak first, if another was up before him; but in general it is better, for the sake of order, especially that it is seldom a matter of much consequence, to submit to the Speaker’s decision: if the House see, from repeated instances, that his behaviour, in calling upon Members to speak, is partial, and that he abuses the trust which is reposed in him, they then have the remedy in their hands†, by putting the question of “Which Member was first up;” and in that case few men would have the confidence to persist in such

\* I do not know upon what occasion the question was put on Mr. Barnard’s speaking, in the year 1728—as in a Committee every Member is at liberty to speak as often as he thinks proper.

† On the 13th of December, 1621, Mr. Mallory and Sir Thomas Hobby, standing up to speak, Mr. Speaker put the question,

Whether should be heard? And, by voice, Sir Thomas Hobby was heard.—See the 20th of February, 1784, where Mr. Fox and Mr. Pitt both rising to speak, the question was proposed, “That Mr. Fox do now “speak;” but it was afterwards withdrawn.

conduct.

conduct.—When a Member speaks, he is to \* stand up in his place, uncovered, and to address himself to the Chair, and not to any particular Member; if he is on the lower seat, he must have one foot within the floor. I remember two instances of the House's permitting Members to speak sitting; one was Mr. Pitt, in † his very long speech against the Peace of 1763; the other the Lord Mayor Crosby, before he was sent to the Tower; both on account of indisposition ‡.—If a Member speaks beside the question, it is the duty of the Speaker to interrupt him; and the House ought for their own sake to support the Speaker in such interposition. Every Member is intitled to be heard quietly, and without interruption; but if he finds that it is not the inclination of the House to hear him, and that by conversation, or any other noise, they endeavour to drown his voice, it is his most prudent way to submit to the pleasure of the House, and sit down §; for it

\* It should seem, from the speeches of Sir Walter Raleigh and Mr. Secretary Cecil, which are entered in the Parliamentary History, Vol. IV. p. 440, that formerly, in Committees, it was usual for Members to speak either sitting or standing. For Sir Walter Raleigh says, "Being a Committee, I may speak either sitting or standing:" and Sir R. Cecil immediately adds, "Because of an argument of more reverence, I choose to speak standing."

† Mr. Pitt spoke for three hours and forty minutes. This, at the time of the first publication of this Volume, entitled me to call his speech "very long." The later practice (contrary to the recommendation of Cicero, mentioned before, p. 95.) has rendered this epithet improper.

‡ On the 21st of February, 1620, it was moved in the House of Lords, by the Earl of Southampton, that the Lord Zouch, a Member of that House, and an antient Parliament Man, of great experience, not being

able to stand, might be allowed, by order of the House, to speak, when his Lordship shall be so disposed, sitting—to which their Lordships generally agreed.

§ In the Parliamentary History, Vol. IV. p. 447, is the following passage: "Serjeant Heale speaking, said, 'The Queen hath as much right to all our lands and goods, as to the revenue of her crown.' At which all the House hemmed, and laughed,\* and talked. Well, (quoth Serjeant Heale) all your hemming shall not put me out of countenance.' So Mr. Speaker stood up and said, 'It is a great disorder that this should be used; for it is the antient use of every man to be silent when any one speaketh; and he that is speaking should be suffered to deliver his mind without interruption.' So the Serjeant proceeded, and when he had spoken a little while, the House hemmed again, and so he sat down."—This was in the year 1601.

scarcely ever happens that they are guilty of this piece of ill-manners without sufficient cause. It is reported of Sir Spencer Compton, that, when he was Speaker, he used to answer to a Member, who called upon him to make the House quiet, for that he had a right to be heard; "No, Sir, you have a right to speak, but the House have a right to judge whether they will hear you." In this the Speaker certainly erred; the Member has a right to speak, and the House ought to attend to him; and it is the Speaker's duty to endeavour for that purpose, to keep them quiet; but, where the love of talking gets the better of modesty and good sense, which sometimes happens, it is a duty very difficult to execute in a large and popular assembly. And indeed the House are very seldom inattentive to a Member who says any thing worth their hearing.

A Member may speak, and often does, from the gallery; but he must have a seat, and not speak in the passage-ways, or from behind the clock.

# RULES OF PROCEEDING.

## VI. *As to putting Questions.*

1. **O**N the 28th of June, 1604, a Member interposes a motion before a former question is disposed of; this is held to be irregular.

2. On the 27th of January, 1697, see a special entry of what was declared by the Speaker to be the sense of the House, without putting any question.

3. On the 22d of April, 1712, motion to adjourn, made and put in the midst of a debate on another question. So on the 14th of June, 1712, and the 7th of May 1713, and the 17th of November, 1742, et passim.—See the 9th of February, 1677\*.

4. On the 24th of February, 1728, the sense and meaning of a question is totally altered by amendments; and on the 12th of March following a question is so much changed, that it passes in the negative, Nem. Con.—See also a remarkable proceeding of this sort on the 10th of April, 1744.

5. On the 17th of April, 1729, a question being proposed, and objection made, that it is a complicated question; it is separated by an amendment.

\* This is the first instance that I have met with of this proceeding.—This mode of superseding a question is also practised in the House of Lords, as on the 13th of January, 1692.



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6. On the 18th of April, 1739, amendment to a Bill proposed by leaving out words; this proposition divided into two questions, and the question put separately, without being separated by amendment.

7. On the 6th of February, 1740, words proposed to be left out of a question, in order to introduce other words instead of them; the first words are accordingly left out, but on a question to insert the others, it is carried in the negative. And on the 7th of February, 1743, there is a question and division on inserting other words\*, and carried but by a majority of one †.

8. On the 1st of April, 1747, motion made and question put, for reading the orders of the day, after another question had been moved and proposed. This is the first instance I recollect to have met with of this proceeding.—See the 5th of March, 1750; and since it has been very common.

9. On the 13th of November, 1755, amendment proposed to a question, by leaving out words; amendment proposed to this amendment, by leaving out part of these words.

10. On the 24th of May, 1604, is the first instance I have found of putting the previous question ‡.

\* And in both these instances, the Ayes went forth, on the question, "That the other words be inserted, instead of those left out."

† See the proceeding on Tuesday the 19th of February, 1782, on the question for the second reading of the Birmingham Canal Bill.

‡ Sir Thomas Littleton therefore was mistaken, when he says, in Grey's Debates,

Vol. II. p. 113. "Sir Henry Vane was the first, that ever proposed putting a question, 'Whether the question should be now put;' and since, it has always been the forerunner of putting the thing in question quite out." Sir Robert Howard, in the same debate says, "This previous question is like the image of the inventor, a perpetual disturbance."

11. On the 16th of January, 1670, there are different numbers in the House, on the divisions on the previous and main question.—Vide 22d of January, 1666.

12. On the 11th of May, 1678, previous question on a motion for adjourning a debate \*.

## O B S E R V A T I O N S.

The ‘general’ rule is, that that question which is first moved and seconded is to be first put †. It was the ancient practice for the Speaker to collect the sense of the House from the debate, and from thence to form a question on which to take the opinion of the House; but this has been long discontinued: And at present the usual and almost universal method is, for the Member who moves a question to put it into writing, and deliver it to the

\* A doubt is conceived in Grey’s Debates, Vol. IX. p. 457, Whether, when a debate is resumed after its being adjourned, the previous question can, in order, be put upon the original question; but very properly determined that it may be put.—See the 27th November, 1689.

† By the standing order of the 18th of February, 1667, “If any motion is made in the House for any public aid, or charge upon the people, the consideration and debate thereof ought not presently to be entered upon, but adjourned till such further day, as the House shall think fit to appoint, and then it ought to be referred to a Committee of the whole House.” In

compliance with this rule, though a motion for a supply is moved and seconded, this question is not to be put. So by the resolution of the 3d of November, 1675, “Where there comes a question between the greater and lesser sum, or the longer or shorter time, the least sum and the longest time ought first to be put to the question.” A similar proceeding to that in questions of supply holds in questions of trade, by the order of the 9th of April, 1772; and in matters of religion, by the standing order of the 30th of April, 1772. These cases therefore are all exceptions to the general rule, “That the question which is first moved and seconded, is to be first put.”

Speaker; who, \* when it has been seconded, proposes it to the House, and then the House are said to be in possession of the question. And that question cannot, after it is proposed from the Chair, be withdrawn but by leave of the House. The Speaker must read this to the House, as often as any Member desires it for his information. But as it frequently happens that questions are moved, upon which the House do not wish to give any opinion, they avoid it, by moving either to adjourn,—or for the orders of the day,—or for the previous question,—or by making such amendments to the question as change the nature of it, and make it inadmissible even by those who proposed it.

The motion to adjourn † must, in order to take place of a motion already made and proposed, be simply to “adjourn,” not with the addition to any particular day; ‡ nor can it admit of any amendment, by adding a particular day; but must be put simply, “That this House do now adjourn;”, and if this is carried in the

\* It is often said, that in a Committee of the whole House there is no necessity for a motion to be seconded: I do not know on what authority this assertion is made; I never met with it in any book, or in any printed debates or proceedings of the House of Commons; nor do I know that it is to be justified by practice.—The reason for requiring a motion to be seconded, appears to me to hold as much in a Committee of the whole House as in the House itself.

† A motion for the House to adjourn, takes place of any motion before made, or question proposed, although the same has been ever so long in debate; and is a method the house has used, to put an end (at least for that day) to a matter which they don't

think proper to determine by a question upon the matter itself. If this question for adjournment takes place before four o'clock in the afternoon, and there is a division upon it, the Yeas go forth; if after four o'clock, the Noes. Mr. O.—The rule, that a motion “to adjourn,” should take place of any other motion, holds also in the House of Lords. See 7th of March, 1757.

‡ But if the motion “to adjourn” is not made in the midst of any other proceeding of the House, and with a view to supersede a question already proposed, then it may, like every other question, admit of an amendment by adding a particular day, as was done on the 27th of March, 1704.

affirmative, the House is adjourned to the next sitting day, \* unless the

\* Though it has been very unusual for the House of Commons to sit on Sunday, it has sometimes happened. On the 8th of August, 1641, both Houses met and sat on Sunday; but this was considered as so extraordinary a proceeding, that, besides a resolution of the House of Commons, "That they would enter into consideration of no business whatsoever upon that day, but such as shall immediately concern the good and advancement of religion, and the safety of the kingdom;" both Houses came to the following unanimous declaration, which they not only specially ordered to be entered in their respective Journals, but directed that it should be printed, That the reasons might appear publickly, and that it might remain to all posterity, what were the true reasons and grounds, why the two Houses sat in Parliament upon the "*Lord's Day*," "Whereas both Houses of Parliament found it fit to sit in Parliament upon the 8th day of August, 1641, being The Lord's Day, for many urgent and unexpected occasions, concerning the safety of the kingdom; and being so straitened in time, by reason of his Majesty's resolution to begin his journey towards Scotland, on Monday following, early in the morning, it was not possible so to settle and order the affairs of the kingdom, either for the government thereof in the King's absence, or for the present safety, as was requisite: Upon those pressing necessities, though the Houses thought it necessary to sit, yet the Lords and Commons now assembled think it meet to declare, That they would not have done this but upon inevitable necessity; the peace and safety both of Church and State being so deeply concerned:

"Which they do hereby declare, to the end, that neither any other inferior Court or Council, or any other person may draw this into example, or make use of it for their encouragement in neglecting the due observation of the Lord's Day."

Both Houses also sat on Sunday the 11th of May, 1679, upon a resolution of the House of Commons of the 8th of May, "That they would sit on Sunday next, to take into consideration that part of the King's speech, which relates to the best ways and means for preserving the life of his sacred majesty, and for securing the Protestant religion, both in the reign of his Majesty and his successors." — On Sunday the 11th of May, the House after many interruptions, which, as stated in Grey's Debates, Vol. VII. p. 236, were supposed to be introduced on purpose to impede the great business of the day, resolve, "That a Bill be brought in to disable the Duke of York to inherit the Imperial Crown of this Realm."

It having been enacted by the 7th and 8th of William III. ch. 15. That in case of the demise of the King, his heirs and successors, the Parliament should not be determined or dissolved by such demise, but required "*immediately*" to meet, convene and sit; and King William dying on Sunday the 8th of March, 1701, both Houses met and sat upon that day. It appears indeed from the Journals of both Houses, that they had, probably from the expectation of this event, adjourned upon the day before, to this day. — By the 6th of Queen Anne, ch. 7, sect. 4 and 5, these directions for the immediate meeting and sitting of Parliament are re-enacted, with this addition, "That if there

the House have come to a previous resolution, "That at its rising they will adjourn to a particular day," and then the House is adjourned to that day. For want of such a resolution, on Friday the third of February, 1764, the House were obliged to sit on Saturday, though no business required it; and, as it was inconvenient to meet again on Saturday, attempts were made to amend the question "to adjourn," by adding, "till Monday;" but, on consideration, this was agreed upon to be irregular. If the motion 'to adjourn' is carried in the affirmative, the original question is never printed in the Votes; it never having been a vote or introductory to any vote. — Another method of superseding a question, already proposed to the House, is by moving for the orders of the day to be read; this motion, to entitle it to precedence, must be for the orders generally, and not for any particular

"be a Parliament in being, at the time of the death of her Majesty, her heirs or successors, but the same happens to be separated by adjournment or prorogation, such Parliament shall, immediately after such demise, meet, convene, and sit; and shall act, notwithstanding such demise, for six months, unless it should be prorogued or dissolved. And in case there is no Parliament in being at the time of such demise, that hath met and sat, then the last preceding Parliament shall immediately convene and sit, and be a Parliament to continue as aforesaid."

Queen Anne died on Sunday the first of August, 1714, upon which day both Houses of Parliament met and sat according to the directions of the statute, though they were then separated by a prorogation, and were not to have met till the 10th of August. So upon the demise of George II. which happened on Saturday the 25th of October, 1760, both Houses met upon the next day,

Sunday the 26th of October, for the purpose of taking the oaths, though the Parliament was at that time separated by a prorogation till the 13th of November. I was then in the service of the House of Commons, as Clerk Assistant, and remember this latter event. — The Speaker and such Members as were in town met in what was then called, The Court of Wards; but the Duke of Rutland, the Lord Steward, being in the country, and not returning till Wednesday; and there being no deputation existing from his Grace to enable any other person to administer the oaths, the Speaker and Members met on Sunday, Monday, and Tuesday, and, having waited till four o'clock each day, departed. See further upon this subject in this volume, under title, "King calls the Parliament." — The House of Commons have upon other occasions also met and sat upon Sunday. See the 10th of November and 1st of December, 1678, and 27th of April, 1679.

order;

order; and if this is carried, the orders must be read and proceeded on in the course in which they stand. But a motion "to adjourn" will even supersede this motion "for the orders of the day." If the question is carried "for reading the orders of the day," the original question does not appear upon the Votes, for the same reason which I mentioned before.—But it is different, if the previous question is moved; there the first question must be stated in the Votes, in order to introduce and make intelligible the second question, upon which the vote of the House is taken. The effect of the previous question, is only to put off the coming to 'that' question, at 'that' time, and is in these words, "That 'this' question be 'now' put." The 'same' question may be therefore moved on 'another' day. If the previous question is negatived, so as to put off the main question to another day, the same question, though altered in 'words,' if not essentially and substantially altered in 'matter,' ought not to be again put that day. On the 27th of March, 1770, a doubt was conceived, whether a previous question can be put upon an amendment; and upon a division, the House determined, that it could not; because the question being, "That these words be 'here' inserted"—or, "That these words stand part of 'this' question"—the decision of this question only determines that they shall, or shall not, stand 'in that particular place,' and has therefore all the effect of a previous question. And yet, on the 8th of May, 1689, and the 16th of April, 1701, and upon the 15th of February, 1753, there are instances of a previous question, on a motion for adding words by way of amendment; but as these are the only instances that I have met with of such a proceeding, so I am clearly of opinion, they were all irregular; for those Members who were of opinion, that that question for adding the words, ought not to be now put, were also of opinion, "that 'those' words ought not to be added to 'that' question in 'that' place;" and therefore their sense might equally have

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have been taken on the question for the amendment\*. It is a rule, that in a Committee of the House there can be no previous question†; if therefore it is wished to avoid a question, it is usual to move, "that the Chairman do leave the Chair;" which has the effect of a motion to adjourn, and takes place of every other motion.—The other mode of avoiding a question, is to alter it by amendments, till it bears a sense different from what was intended by the proposers: This, perhaps, is not quite fair, but has been often done; and the instance relating to the Duke D'Arenberg, of the 10th of April, 1744, is a very remarkable one. So on the 29th of January, 1765, on a question moved by Sir William Meredith, relating to General Warrants, the opposers of the question amended it in such a manner, that it was impossible for any person to agree to it; when this appeared in the proof-sheet of the Votes, the amended question was entered very properly, by the Speaker's direction, without taking notice of the original question, or of the amendments, and as if this had been the only question that had been proposed; it happened that Sir William Meredith had had leave to make a motion, which was also entered; it therefore appeared in the Votes, as if this had been the motion which Sir William had originally made, though, by the alterations it had undergone, the sense of it was totally reversed; he therefore desired that the whole proceeding, viz. his original question, with the amendments, might be printed in the Votes, in the same manner as it would appear in the Journal. The Speaker stated to the

\* So when it is proposed to leave out words, and the question is put, "That these words stand part of this question," it is implied, "in that particular place," for if they are left out "there," nothing precludes the same words, from being again inserted in the same question, in a subsequent part of it.

† I don't know the reason of this rule; it is often as convenient to put the previous question in a Committee, as in the House: And the putting the other question, "That the Chairman do now leave the Chair," if carried, is often attended with much inconvenience.

House, that the manner, in which he had entered it, had been the universal practice; viz. where amendments are made to a question, not to print those amendments in the Votes, separated from the question, but only the question as finally agreed to by the House; and that he could not find any instance to the contrary; that the rule of entering in the Votes, only what the House has agreed to, is founded in great prudence and good sense; as there may be many questions proposed, which it may be improper to publish to the world, in the form in which they are originally made; besides, that the order "That the Votes be printed," did not authorise him to print the 'proceedings' of the House, but only the final 'vote' upon any question as agreed to, or disagreed to, by the House. In this opinion the House acquiesced; but at the same time, from the particular circumstance of Sir William Meredith's name appearing as the mover, they gave leave, that, in this instance only, the common form of the entry should be altered; but that a memorandum should be made of the reasons, and to prevent this from being drawn into a precedent, where the same reasons should not exist\*.

When a question is complicated, that is, consists of two or more propositions, it has been often said, that it is the 'right' of any one Member to have it divided, in order that he may give his opinion upon each proposition separately. This was a very favourite topic with Mr. George Grenville, and often repeated by him, and at last insisted upon so much, in the question about the Middlesex Election, on the 16th of February, 1770, that it was thought necessary to take the sense of the House upon it; which was done by a

\* The same necessity arose on the 9th of February, 1785, where, though, by amendment, the original question was totally changed, it became necessary to state it in the Votes, from the debate upon the amendment being adjourned, in order to admit a petition complaining of an undue election.



question \*, and carried in the negative, on the 19th of February : so that this matter is now at rest. Upon this occasion, every thing was urged that could be said in favour of the doctrine, as laid down by Mr. Grenville ; but the truth is, there does not appear the least trace, in the History of the Proceedings of either House of Parliament, of this ever having been the practice ; indeed, it would introduce universal confusion ; for who is to decide, whether a question is complicated or not ?—‘ where ’ it is complicated ?—into how many propositions it may be divided ? Perhaps, when the question was formed by the Speaker from the debate, and not moved by a Member, it was a very proper objection to the manner of the Speaker’s stating a question, that it was complicated, and to desire that he would separate it ; and to this and this only, every thing that is said in the case of Ashby and White, and in the other debates, may be referred : But when a question is moved and seconded, and proposed from the Chair, however complicated it may be, the only mode of separating it, is by moving amendments to it † ; and these must be decided by the House, upon a question : unless, which sometimes happens, that the House ‘ order ’ that it shall be divided ‡, as they did in that very instance of the 19th of February ; and on the 2d of June, 1795 ; or by ‘ consent ’

\* On the 19th of February, 1770, the question being put, That it is the rule of this House, that a complicated question, which prevents any Member from giving his free assent or dissent to any part thereof, ought, *if required*, to be divided ; it passed in the negative.—But the same question, on which this debate arose, was immediately divided by *order of the House* ; as had been done on the 2d of December, 1640.

† See a debate upon this point, in the House of Lords, on the 21st of February, 1734 ; in which Lord Bathurst insists upon the right of every Lord to have the question

separated ; but is compelled by the House to move it as an amendment.—Lords Debates, Vol. IV. p. 392.

‡ On the 2d of December, 1640, on the question for making void the election of the Knights of the Shire for the County of Worcester, a question was made, Whether there should be *two* questions made of it, or *one*.—Resolved, there should be *two*.—This instance is referred to in *Lex Parliamentaria*, p. 294 ; where it is said, “ If a question, “ upon a debate, contain more parts than “ one, and the Members seem to be for one “ part, and not for the other, *it may be* “ moved,

' consent ' of the House, as on the 25th of January, 1771 ; the 9th of April, 1772 ; and in Lord Clive's case, on the 21st of May, 1773. Indeed, the doctrine of any one Member having ' a right ' to insist upon any thing \*, appears to be absurd ; for another Member may insist upon the contrary ; and therefore, in all cases whatever, the only method of deciding whether any thing shall, or shall not, be done, or how it shall be done, must be by moving a question to the House, that question to be seconded, and proposed from the Chair, and the sense of the House taken upon it.—Although a question is moved and seconded, and proposed from the Chair, if any matter of privilege arises, either out of the question itself, as on the 26th of January, 1768, in the case of the Oxford

" moved, that the same may be divided into  
" two or more questions †."

\* The only exception to this is, when a Member calls for the execution of a subsisting order of the House. Here, the matter having been already resolved upon, and ordered by the House, any Member has a right to insist that the Speaker, or any other person, whose duty it is, shall carry that order into execution, and no debate or delay can be had upon it ; and this frequently happens in the cases of admitting strangers into the gallery—the clearing the lobby of Footmen—telling the House, when notice is taken that forty Members are not present ; &c. every Member being entitled to have the orders and resolutions of the House carried into immediate execution ; and in this case,

the Member does not properly *make any motion*, but only *takes notice*, that the orders of the House are disobeyed. See the 24th of January, 1711, 19th of March, 1716, 13th of April, 1717—10th of March, 1734.—It is from the want of observing this distinction, that many persons have fallen into the mistake above-mentioned.—But in cases where there is no standing order or resolution of the House, if a Member proposes any thing, and that proposition is not seconded (which frequently happens) the Speaker takes no notice of it, and nothing is done in consequence of it—See further what is said upon this subject, under the title " Questions on reading Journals, or " Papers."

† " After a question is *propounded* (i. e. proposed from the Chair) any Member may offer his reasons against the question, in whole, or in part ; which may be laid aside, by a general consent of the House, without a question put : but without such general consent, no part of the question propounded may be laid aside, or omitted : And, though the general debates run against it, yet if any Member, before the question put (without that part) stand up and desire, that such words or clause may stand in the question, before the main question is put, *a question is to be put*, Whether those words, or clause, stand in the question."—*Lex Parliamentaria*, p. 287.—See also the proceeding in the Lords Journals, 29th January, 1722, in p. 73, on the question relating to the printing of Lyster's trial ; where, notwithstanding the objection of its being complicated, the separation was proposed by way of amendment.

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Corporation ; or from any quarrel between Members, or any other cause, this will supersede the consideration of the original question, and must be first disposed of : So if any question of order arises, as on the 16th and 19th of February, 1770, and on the 27th of March, 1770, this must necessarily be first decided : Or if it is desired to have an Act of Parliament, or extract from the Journal, or any paper before the House, read, and the House acquiesce, this may be read : If, however, any person objects to the reading these papers, it is not, as is often said, the right of any Member to insist upon it—for this would be a right to interrupt all business ;—but, as on the 22d of March, 1663, and on the 16th of April, 1697, and on the 15th of January, 1699, and on the 12th of May, 1714, a question, whether or not such acts or papers shall be read, must be stated, and decided upon by the House\*.

The right of making a motion “ for the orders of the day ” to be read, in the midst of another proceeding, does not hold, where the House are actually proceeding upon one of the orders ; it is only to supersede a question upon any other matter, not properly the business of the day.

It has been sometimes made a doubt, whether, when a question has been proposed from the Chair, and the previous question has been moved and seconded, and also proposed from the Chair, the House can admit amendments to be made to the main question, without withdrawing the previous question : There have been different opinions upon this : It is said on the one side, that it is reasonable to admit the making these amendments, because, if re-

\* So on the 17th of February, 1669, on a motion for a supply, and another motion, that an order, made two years before, directing the mode of proceeding might be read ; the House, by a division, determine that the question for a supply shall be put, before the reading of the order.

ceived, they may, in some cases, so far change the nature of the question, as to preclude the necessity of putting the previous question ; besides that, if the contrary doctrine is true, it is in the power of any two Members, by moving and seconding the previous question immediately after the main question is proposed, to deprive the House of that power which they ought to have, in all instances, of amending and altering any question proposed to them : For the practice is, that when the previous question is put and carried, no alteration can then take place \*, nay, no further debate can be suffered to intervene ; the Speaker must put the main question immediately, and in its present form ; and that therefore to refuse the right of moving amendments, is to cramp the substantial proceedings of the House by meer form.—To this it is answered, that no inconvenience can arise from this doctrine ; for if, before the previous question is ‘ proposed ’ from the Chair, though it should have been moved and seconded, any Member should inform the House, that he wishes to make amendments to the main question, he will ‘ then ’ certainly be at liberty to do it ; and the Speaker, supported by the House, will give that priority to the motion for amending, to the motion for the previous question, which common-sense requires. But if even the previous question should have been ‘ proposed,’ yet if it is the general sense of the House to admit the discussion of the amendments proposed, the previous question may be withdrawn for that purpose. But if the persons moving and seconding the previous question should refuse to withdraw it, against the opinion of the majority of the House, even then no inconvenience will happen ; for, if it should be carried, “ That ‘ this ’ “ question be not ‘ now ’ put,” which would be the event, if the

\* After the previous question is put, “ Whether such a question shall be put,” and carried in the affirmative, no words can be added or taken from it, nor any further debate, but the main question must be *immediately* put. Mr. O.

If the previous question be put, and pass in the affirmative, then the main question is to be *put immediately*, and no man may *speake any thing further* to it, either to add or alter. Lex. Parl. p. 292.

majority of the House desired to admit the amendments, (and, if the majority of the House do not desire any alteration, then there is no harm done in putting the question in its original form) another question, similar to the former, but ‘essentially altered’ by the proposed amendments, may be immediately moved and seconded.

I confess that I am of the latter opinion, for several reasons. (1.) I do not find in the Journals any entry of amendments proposed to be made to the main question, after the previous question ‘proposed’ from the Chair: And yet, the case of desiring the admission of amendments, at that juncture, must have occurred very often. (2.) I think there will be less confusion and interruption in the debate, by adopting the latter doctrine, than the former; and it is more consonant to the uniform practice of the House, “that, when a motion has been made and seconded, and ‘proposed’ from the Chair, no other motion should intervene, without the consent of the parties, and the concurrence of the House, to withdraw such motion.” (3.) No more inconvenience arises from this doctrine, than from an established rule of the House, and which has been always strictly observed, “That, when you have amended the latter part of a question, you cannot recur back, and make any alteration in the former part.” And yet this is very often to be desired. The House must be therefore attentive to what is going forwards; and, when a question is proposed from the Chair, if any Member wishes to amend it, he ought to propose his amendments; but if that opportunity is passed by, and the previous question is ‘proposed’ (which is indeed an amendment of the whole question, viz, by ‘leaving it all out’) I cannot conceive that, without withdrawing the previous question, it is possible to recur back and amend the main question. And if, after all, it should be carried, that ‘that’ question be not ‘now’ put, confessedly

confessedly for the purpose of introducing the 'same' question, with essential alterations and amendments, I should not imagine the moving this 'new' and thus amended question to be irregular; because the rule of not 'putting again' a question, against which the previous question has been carried, must be always explained, in the observance of it, by the nature and turn of the debate, and the 'sense' which the House puts on the word 'now' in their arguments upon the previous question.—On the 16th of March, 1778, the House, by their proceedings, adopted this doctrine; for, after the question was moved and proposed, and the previous question was also proposed, an amendment being afterwards suggested, to insert the words "or extracts," it was by the House thought necessary to withdraw the previous question, before any amendment could be admitted. And, as will appear from the Journals, the proceeding was accordingly.

## RULES OF PROCEEDING.

### VII. *The same Bill or Question not to be twice offered.*

1. **O**N the 2d of April, 1604, rule, That a question being once made, and carried in the affirmative or negative, cannot be questioned again, but must stand as a judgment of the House.

2. In the 4th volume of the Parliamentary History, page 391, see the distinction made by Sir Walter Raleigh, on putting a question that had received a negative the day before.

3. On the 17th of May, 1606, in the Journal of the House of Lords, see the rule \* laid down, on a second Bill brought from the Commons, to the same purport of a former that had been rejected by the Lords in the same session.

4. On the 1st of June, 1610, agreed for a rule, That no Bill of the same substance can be brought in the same session.

5. On the 8th of September, 1641, the same question put twice in the same day, and carried differently, on divisions, about Mr. Ashburnham's pay.

\* The substance of this rule is, " That a Bill being brought into the House and afterwards rejected, another Bill of the same argument and matter may not be renewed in the same House in the same session; but if a Bill begun in one House, be disliked and refused in the other, a new Bill of the same matter may be drawn and be-

gun again in that House whereunto it was sent; and if, a Bill being begun in either House, and committed, it be thought by the Committees, that the matter may better proceed by a new Bill, it is likewise holden agreeable to order, in such case, to draw a new Bill, and to bring it into the House."

6. On the 29th of March, 1671, the Lords take notice that in a Bill, sent from the Commons, there is a clause concerning Brandy, the same as is contained in another Bill, then depending between the two Houses. This matter is referred to the Committee of Privileges, who report, on the 30th of March, their opinion of the irregularity of this proceeding, and the House resolve, "That this proceeding of the House of Commons is unparliamentary, and of dangerous consequence \*.

7. A dispute arising between the two Houses, upon some amendments made by the Lords to the Bill for raising money for disbanding the army; the Commons, on the 3d of July, 1678, insert the substance of this Bill in another Bill then in the House, pending the conferences; and to this Bill the Lords agree on the 12th of July †.

8. On the 4th of December, 1678, the King having refused the Royal Assent to the Militia Bill, offers to pass another with some limitations; the House appoint a Committee to search precedents, Whether, according to the methods of Parliament, such a Bill can be brought in; but no report is made from the Committee.—See the debates in Grey upon this question ‡, from the 30th of November to the 4th of December.

\* See in the note to N<sup>o</sup> 21 of this Title, a reference to the Journal for the Precedents cited by the Lords in justification of their doctrine. The observations of the House of Commons upon those Precedents, with their reasons for adopting this measure, are to be found in the Lords Journal of the 17th of April, 1671, page 497.

† But see the Lords Journals, the 23d of February, 1691, when, upon a similar proceeding, there is not only a protest, but there is a special entry made by order of the House, to explain the grounds upon which

the Lords assented to this proceeding, at this time; the conclusion of which is, "But to prevent any ill consequences from such a precedent, for the future, the Lords have thought fit to declare solemnly, and to enter upon their books, for a record to all posterity, that they will not hereafter admit, upon any occasion whatsoever, of a proceeding so contrary to the rules and methods of Parliament."

‡ See the 6th vol. of Grey's Debates, p. 300.



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9. On the 29th of June, 1685, a Bill is begun in the House of Commons for registering Births, &c. and rejected after the second reading; and another Bill ordered in immediately with the same title\*.

10. On the 16th of December, 1706, Clause offered, on the report of the Land-tax Bill, relating to assessments of Papists, and rejected on a division; but the same Clause offered on the third reading, on the 18th, and accepted.

11. On the 8th of April, 1707, the Parliament was prorogued to the 14th, which Bishop Burnet† says, was to give the Commons an opportunity of bringing in a new Bill, similar to one that had been rejected in the House of Lords, relating to the importation of foreign commodities into Scotland. And this appears from the Queen's Speech, on the 14th of April, and from the subsequent proceedings, to have been the reason‡.

12. On the 9th of February, 1709, a Bill is ordered to explain an Act of the same session, about the exportation of corn.—See the 3d of April, 1744, and the 28th of March, 1748, when Bills are ordered in, “for rectifying mistakes in Acts passed in the same session§.”

13. On

\* This is not within the rule laid down by the Lords in 1606, and was certainly irregular.

† History of his Own Times, Vol. II. p. 467.

‡ On the 28th of May, 1624, the Lords send a message, that they were contented to pass the Bill of pleading of Alienations, with the amendments passed by this House without the proviso; but that they having passed the proviso there, they could not pass the

new Bill without it: Therefore if the Commons would pass a new Bill without the proviso, they would pass it.—Whereupon a Bill was presently drawn without the proviso, read three times, and passed, in the same day.—It appears, that the Lords had made amendments to this Bill; but the leaving out the proviso, was not one of them. See Commons Journals, Vol. I. p. 715.

§ In the Lords Journals of the 25th of May, 1689, it is said “To be the common course

13. On the 13th of April, 1711, there having been a great mistake in a Bill of supply, by inserting a duty of 'two' shillings on coals instead of 'one;' a Committee is appointed to examine how the mistake happened: On the 30th of April they report; and on the 9th of May there is an instruction to a Committee to receive a Clause in another Bill to rectify this mistake\*. See on the 15th of April, 1712, and the 2d of July, 1714, and the 25th of March, 1757, Bills ordered "for rectifying mistakes."

14. In 1711, Bishop Burnet says †, the House of Commons, in one branch of the duties imposed for the taxes of this year, seemed to break in upon a rule that had hitherto passed for a sacred one; for when the duty upon leather was first proposed, it was rejected by a majority, and so by the usual orders of the House of Commons, it was not to be offered again during that session; but after a little practice upon some Members, the same duty was proposed, with this variation, "that skins and tanned hides should be charged;" ‡ this was leather in another name.

15. On the 26th of July, 1715, a Bill is ordered for enforcing and making more effectual an Act of the same session.—See the 29th of March, 1765. So on the 10th of January, 1715, a Bill is ordered for continuing an Act of the same session.

"course of Parliament, to pass explanatory Acts, if any thing has been omitted, or ill-expressed, in any other Act passed in the same session."

\* It is remarkable, that in the original Act, the 9th of Anne, chap. 6th, as it is printed, the sum is only 'one' shilling, and in the printed copy of the 9th of Anne, chap. 23, in which the mistake was rectified, no

Clause appears for this purpose: I have also examined the Paper Bill, and can find no Clause, nor any thing relating to it.

† History of his Own Times, Vol. II. p. 563.

‡ The measure here spoken of, to recover the loss of the former question, was mean, unparliamentary, and dangerous.—Mr. O.

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16. On the 19th of February, 1718, it was moved to give an instruction to a Committee on a Bill relating to forfeited Estates, to have power to receive a Clause for a particular purpose ; which passed in the negative. On the 26th, on the report of the Bill, the same Clause was offered, and it was doubted whether, in point of order, it could be received ; but no decision was given upon this doubt, as the previous question was moved, and carried in the negative.—See the 12th and 13th of April, 1727, a motion to leave out, on the report, what had been inserted in the Bill by instruction.

17. On the 29th of July, 1721, the King prorogues the Parliament for two days, to enable the House of Commons to pass into a law some resolutions relating to the South Sea Company, which were contradictory to some Clauses in an act passed in that session ; and which therefore the Commons say, in their Address of the 25th of July, could not otherwise be done, “ agreeable to the “ antient usage and established rules of Parliament.”

18. On the 24th of November, 1721, on the report of the Mutiny Bill, it was proposed to disagree with the Committee in a Clause they had added about Lord Carpenter's pay ; but on a division it was carried for the Clause. On the third reading, on the 28th of November, a question being again moved on this Clause, it was disagreed to, and the Clause cut off at the Table.

19. On the 14th of May, 1723, the House disagree on the report of a Bill, with a Clause to compel Papists to register their estates ; and on the 16th order in a Bill for that purpose.

20. On the 6th of March, 1723, on the report of a Bill, there was a division on a question for excusing persons of 'seventy' years of age from taking the oaths, and carried in the affirmative; on the third reading of the Bill, on the 11th, this question was moved again, but still carried in the affirmative.

21. On the 25th of April, 1729, the Commons pass a Bill for disabling Bambridge to hold the office of Warden of the Fleet, which is carried to the Lords\*; on the 7th of May the Lords send down another Bill to the same effect, which the Commons pass.—See Bambridge's Petition on the 9th of May, taking notice of the two Bills depending at the same time†.

22. On the 2d of May, 1733, a Clause was offered on the third reading of a Bill; but the Journal says, "it appearing that the same Clause was originally in the Bill, but left out by an amendment made by the Committee," the said Clause was withdrawn.

\* See the Lords Journals of the 5th of May, 1729, for this proceeding.—See also, in the Commons Journals of the 17th of January, 1701, the proceeding upon the Bill of Succession, as coming from the Lords, which is ordered to lie upon the table.

† On the 8th of March, 1580, there is the following entry in the Lords Journal: "This day the Commons House, amongst other Bills, sent up a new Bill, for the fortifying of the borders against Scotland, and withal returned a former Bill, that with great deliberation the Lords had passed and sent down before with the same title; which course the Lords thought to be both derogatory to the superiority of the place, and contrary to the ancient

course of both Houses; and as they misliked the disorder, so was it their pleasure, that this their misliking should be entered in the records of Parliament, lest so evil an example might be hereafter abused, as a precedent." But the Lords read the Bill so sent up, and on the 15th of March agreed to it with amendments.—See also the entry in the Lords Journal of the 22d of March, 1587, upon a similar proceeding on a Bill for the sale of Thomas Hanford's lands, which the Lords refused to read, nem. con.—See in the Lords Journal of the 17th of April, 1671, p. 497, the observations of the Commons upon these two cases. See also before N° 6.

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23. On the 18th of April, 1739, words left out on the third reading of a Bill, which are expressed to have been inserted by an amendment made by the House to the Bill.

24. On the 30th of May, 1739, the Lords having amended a Bill about gaming, which had passed the Commons; the consideration of these amendments is put off for a month, and leave is immediately given to bring in another Bill to the same effect, but with a different title, which Bill passes.—See also the same proceeding on the 11th of May, 1759.

25. On the 18th and 20th of November, 1745, two questions and divisions on the 'same' Clause, on the report and third reading of the Land-tax Bill. So on the 9th of March, 1748, words inserted in the Mutiny Act on the third reading, which had been proposed by the Committee as an amendment, and left out by the House on the report, on the 6th of March.—See the 17th and 19th of March, 1755, the same questions on the report and third reading of a road bill.

26. On the 1st of April, 1748, a resolution is reported from a Committee of the whole House, appointed to consider of the execution of an Act of the present session, for raising a sum of money by annuities, "That the time for payment on the subscription of the sums required by that Act, should be enlarged." This resolution is afterwards carried into effect by an Act passed in the same session.

27. On the 11th of April, 1753, a Bill from the Lords for settling Lord Ashburnham's estate, read once, and laid aside; and another Bill, with the very same title, ordered immediately.

28. On

28. On the 21st of June, 1757, a Bill ordered for enlarging the time limited for executing several Acts of that session.—See also the 2d of June, 1758.

29. On the 29th of March, 1765, a Bill is ordered in, “For making more effectual an Act passed in this session of Parliament.”

30. In June, 1795, a Bill passed for allowing further time for taking out certificates for wearing hair-powder, than had been fixed by an Act of the same session.

## OBSERVATIONS.

That the same question, which has been once proposed and rejected, should not be offered again, in the course of the same session, seems to be a rule that ought to be adhered to as strictly as possible, in order to avoid surprise, and that unfair proceeding, which might otherwise sometimes be made use of\*. It however appears, from several of the cases under this title, as well as from

\* The Bill for the Exclusion of the Duke of York having passed the Commons, and been rejected by the Lords on the 15th of November, 1680, the Commons understanding that the Parliament was about to be prorogued, resolve, “That whoever advises his Majesty to prorogue this Parliament to any other purpose than in order to the passing of a Bill for excluding James

Duke of York, is a betrayer of the King, &c.”—On the 7th of February, 1673, the Speaker, Seymour, says, “If you reject a Bill by a question, nothing of the same nature can be brought in again this session; but you may withdraw the Bill in order to bring in another upon debate.”—Grey’s Debates, Vol. II. p. 389.

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every day's practice, that this rule is not to be so strictly and verbally observed, as to stop the proceedings of the House : It is rather to be kept in substance than in words ; and the good sense of the House must decide, upon every question, how far it comes within the meaning of the rule. It clearly does not extend to prevent the putting the same question in the different stages of a Bill ; nor to prevent the discharging of orders that have been made, though made on great deliberation ; as appears from the instances on the 14th and 17th of January, 1766, on discharging the order made for printing the American papers. But it has been always understood to exclude contradictory matters from being enacted in the same session ; and it was upon this principle that it was thought necessary to make the short prorogations in 1707, and 1721 \*.

In the Lords' protest of the 23d of February, 1691, it is said, " that a Bill having been dropt, from a disagreement between the " two Houses †, it is against the known and constant method of

\* The Bill, which passed in 1787, for consolidating the several duties of Customs and Excise, contained such a quantity and variety of matter, inasmuch as it imposed a new duty upon almost every species of merchandize, that it was thought prudent to insert a clause in the Bill, which reserved to Parliament a power of varying or altering any part of it in the course of the same session.—Without this clause, it would have been impossible, in the course of that session, to have changed or made any variation in any of the duties, or of the articles which composed the French tariff, (which also made a part of this Bill,) however material or ne-

cessary such an alteration might have been. It appears from N<sup>o</sup> 26, 28, and 30, that this rule does not extend to prevent passing Bills for extending the time for executing the provisions of Acts passed in the former part of the same session.

† The practice however has been sometimes different, as may be seen from some of the precedents under this title.—See a particular entry in the Commons Journal of the 4th of May, 1772, upon giving leave to bring in a Bill, containing the same provisions with a Bill, that had passed the Commons in that session, but had been rejected by the Lords.

“ Parliamentary proceedings, to bring in the same Bill in the same session \*.”—On the 12th of May, 1767, on the second reading of a Bill for the importation of salted meat free of duty, Mr. Rose Fuller took an objection, in point of order, that as a Bill had already passed in this session, continuing an Act of the 5th of George III. which admitted the importation of salted meat from Ireland, but paying a duty, the House could not repeal this duty in the same session, and that therefore in the Committee there must be put in an exception with respect to meat brought from Ireland: This objection was admitted to be good, and the alteration was made accordingly; and it appears from the 10th of June, that this alteration was expressed in the title, when the Bill passed.—† On the 9th of December, 1762, the Commons came to a resolution to address the King on the preliminaries of peace, and appointed a Committee to draw up the Address; which being reported the next day, and Lord Midleton beginning to debate upon the Address at large, Sir John Philips called him to order, as being disorderly, in debating against a resolution which the House had agreed to the day before; and said that no objection could now be

\* See the Note † in this volume, under the title, *King opens the Session*.

† The question moved by General Conway, on Wednesday the 27th of February, 1782, was undoubtedly the same in substance, and so acknowledged to be by him, as that which the House had rejected on the Friday preceding. He however alledged, that the very small majority, consisting only of one, by which the former question had been negatived, the importance of the question, which comprehended in it no less than the separation or reconciliation of two parts of the British empire, and the necessity of declaring the clear opinion of a full House of

Commons upon this great subject, were in his opinion motives that ought to outweigh the objection of form, “ especially as he had introduced, in the second question, some words which were not in the first; and which, to some persons, might make, in their opinion upon the subject, an essential difference.” These arguments were thought to be of such weight, that the objection of form was never made. It was hinted at by Sir Fletcher Norton, though speaking in favour of the question; and admitted by him, that, in a question of less importance, it was an objection that would have deserved much consideration.



taken, but to the manner in which the Committee had executed their power. To this it was answered, that where by the forms of proceeding, as in the case of Bills, and Reports from Committees, the same question is again brought before the House, the House have a right to debate, before they give their opinion; that in this instance, the question must be put for agreeing to the Address, and every Member had a right to give every reason that determined him not to agree to it. When the objection made by Sir John Philips was mentioned to Mr. Onslow, the late Speaker, he was clearly of opinion, that it was not contrary to order, again to renew the debate on the question at large.

With respect to Bills, it is clear, that wherever any clause or words are in a Bill, though they should have even been inserted, as an amendment, by the House, yet upon any other subsequent stage of the Bill, the sense of the House may be again taken upon these words, and they may be left out; because every stage of a Bill submits the whole and every part of it, to the opinion of the House; and this being the known order of the House, there can be no surprise upon any person whatever. Upon this principle are founded the cases of the 24th of November, 1721; — the 6th and 11th of March, 1723; — the 18th of April, 1739; — and the 17th and 19th of March, 1755. It \* has been made a matter of doubt, when a clause or

\* It has been very judiciously observed by a friend, to whom this work was communicated, "That with respect to amendments to Bills, the rule ought to be the same, whether the amendments first offered are carried in the affirmative or negative; and therefore that words once inserted in a Bill, ought no more to be left out in a subsequent stage, than words refused to be

admitted should be again offered; but that the practice ought to be the same with respect to both."

The true doctrine therefore is, that in every stage of a Bill, every part of the Bill is open to amendment, either for insertion or omission, whether the same amendment has been in a former stage accepted or rejected.

particular words are moved to be added or inserted in one stage of a Bill, and the House have given a negative to this motion, whether the same clause or words may be offered again upon any subsequent stage of the Bill? When this doubt was conceived, on the 26th of February, 1718, the House put the previous question, on offering the clause; and on the 2d of May, 1733, the reason is given in the Journal for withdrawing the clause, "that it had been originally in the Bill, but left out by the House." However, the instances of the 16th and 18th of December, 1706, and 9th of March, 1748, suppose that they may.

## RULES OF PROCEEDING.

### VIII. *Witnesses at the Bar, or Delinquents to receive Judgment.*

1. **O**N the 9th of May, 1604, rule, That no delinquent is to be brought in, but by the Serjeant with the Mace.

2. On the 11th of November, 1640, rule, That if a witness \* be brought to this House, the House sitting, the Bar ought to be down; otherwise, if the House be in a Committee.

3. On the 7th of February, 1661, Mr. Chute censured at the Bar with great solemnity, for a breach of privilege committed on the 28th of January.

\* It was said by Compton (Speaker) that he thought it irregular for any Member to produce witnesses to be heard at the Bar, without previously acquainting the House thereof, and desiring that he *might have leave* to examine such and such. Mr. C.

This note of Mr. Onslow's, is a confirmation of the regularity of the determination of the House, on the 3d of March, 1779; when, it being proposed, by a Member, to examine Admiral Keppel in his place, with respect to the state of the English and French fleets, it was refused to permit this examination to *be taken down as evidence*, "no enquiry having been instituted by the House."—A similar proceeding was attempted by Sir Thomas Clarges, to examine

Admiral Russell, then a Member, on the 7th of November 1691, touching the miscarriage of the fleet; but opposed, by several experienced Members, as contrary to the order and practice of the House.—Mr Hampden says "I never saw the like—It was never known, in this manner, in a House of Commons. It must be the opinion of the House, Whether the questions should be asked." Gray's Deb. Vol. X. p. 165.

The regular mode of proceeding is, in all cases, for the House to determine first, that an enquiry shall be entered into, before any Member can be permitted to produce witnesses to be examined to any matter relative to that enquiry.

4. When the Lord Mayor Vyner is called in to be examined, touching the charge against the Lord Treasurer Danby, a question is put, "That he have a chair set him \*, to sit down at the Bar." On a division, this is carried 141 to 137.

5. On the 26th of October, 1675, Mr. Howard called in to the Bar, has, on account of his infirmity, a chair allowed him to sit down in.

6. On the 6th of November, 1696, Sir J. Fenwick brought from Newgate to the Bar, and examined and remanded: And on the 13th, 16th, and 17th of November, he is brought to the Bar, by the Serjeant with the Mace, on the second reading of the Bill of Attainder.

7. On the 2d of February, 1704, persons who had been committed to Newgate by the House, brought by the Keeper of Newgate, and called in and examined, and remanded to Newgate.

8. On the 14th of March, 1710, see the Manner of Colonel Gledhill's being heard at the Bar, in support of his charge against Sir James Montagu.

9. On the third of June, 1721, is a report from a Committee appointed to examine precedents †, in what manner persons, who are

\* It appears from Grey's Debates, Vol. III. p. 82, that, previous to his being called in, the Speaker informed the House, "That the Lord Mayor and Aldermen have been upon their knees here at the Bar, and you may refuse to the Lord Mayor a chair.—It is a civility you give to a Lord,

" that is a Peer, and not to a Commoner.  
" The Judges, who have come hither, have had chairs, because they have been called by the King's writ of attendance, to the Lords House."

† See the several precedents cited in this Report.

prisoners in execution, have been examined before the House. The same day, Mist is ordered to be brought to the Bar, when a prisoner in the King's Bench; the Serjeant stands by him with the Mace, and he is then committed to Newgate.

10. On the 1st and 2d of April, 1723, Kelly is brought from the Tower to the Bar, on the second reading of Bill of Pains and Penalties, and the Serjeant stands by him with the Mace.

11. On the 31st of March, 1731, Jevon, in custody of the Serjeant, brought to the Bar to be examined; but no notice is taken of the Mace.

12. On the 13th of April, 1738, Edwin being brought to the Bar to be examined, in custody of the Serjeant; the Serjeant stood by him with the Mace. See the case of Billingsley, on the 14th of April; but on the 11th of February, 1739, in the same proceeding, against other persons in custody, no notice is taken of the Mace. See the case of Moring, on the 24th of February and the 1st of March, 1764.

13. On the 6th of February, 1750, see the proceedings against Mr. Murray, on his refusing to kneel to receive the sentence of the House.

14. On the 12th and 15th of February, 1768, Withy brought to the Bar in custody, without mentioning the Mace.

15. On the 27th of January, 1769, Mr. Wilkes, a prisoner in the King's Bench, brought in to the Bar, to support his petition against Lord Mansfield, but not with the Mace.

16. On the 16th of March, 1772, a standing order is made, that when any person is brought to the Bar to receive judgment, or to be discharged out of custody, such person shall receive such judgment 'standing' at the Bar, unless otherwise directed in the order of the House.

## O B S E R V A T I O N S.

When a witness is called in, in order to be examined, the constant practice, both in the House and at Committees of the whole House, is that the Bar is down: It is not so at the Committee of Privileges; because, though they adjourn to the House for their own convenience, they are but a Select Committee, and not a Committee of the whole House. If the witness is already in custody of the Serjeant, or is brought from any prison, the practice, with respect to the Serjeant's standing by the prisoner with the Mace, appears to have been different: Mist's case, in 1721; Sir J. Fenwick's, on the 13th of November, 1696, who was then brought to attend on the hearing of the second reading of the Bill of Attainder; Kelly's, in 1723; Edwin's, in 1738; and John Horne's \*, on the 17th of February, 1774; all seem to prove, that whenever any person, already a prisoner, whether in custody of the Serjeant, or in any other prison, is brought to the Bar as a witness, or to attend the hearing of any cause, he must be brought in by the Serjeant, and the Serjeant must stand by him at the Bar, with the Mace, during the time he continues there: On the other hand, the case of P.aty, and others, in 1704; Sir J. Fenwick, on

\* This Gentleman is better known since, by the Name of John Horne Tooke.

the 6th of November, when he is brought in to be examined; Jevon, in 1731; the cases of the 11th of February, 1739, and the 1st of March, 1764; of Withy, in 1768; and of Mr. Wilkes, in 1769, contradict this practice; and shew that a prisoner may be brought to the Bar to be examined, or to be present (as Mr. Wilkes was on the hearing of the charge in his petition against Lord Mansfield) without the necessity of the Serjeant's standing by him with the Mace; and yet, in supposition of law, Mr. Wilkes, and the others, were, during the time they were at the Bar, in the custody of the Serjeant; which confirms what Mr. Howe says\*, in the Debates in Sir J. Fenwick's Case; "A man may be in custody of the Serjeant, though he has not the Mace in his hand." When a witness, not in custody, or in custody without the Mace standing by him, is at the Bar to be examined, the House supposes the Speaker to ask him all the necessary questions; and these questions may, by the rules of the House, be proposed, at the time of the witness's standing at the Bar, by the Members to the Chair; and the Speaker is to put them to the witness. This is the rule; but the practice, for the sake of convenience, often is, that the Members themselves examine the witness without the intervention of the Chair; this practice however is irregular, and seldom fails to produce disorder.

When the Mace is off the Table †, no Member can speak, not even to suggest questions to the Chair. This matter was very much

\* See the printed proceedings against Sir John Fenwick, p. 10.—where there is much learning upon this subject.

† When the Mace lies upon the Table, it is a House. When under, it is a Committee. When the Mace is out of the House, no business can be done. When from the Table, and upon the Serjeant's shoulder at the Bar, the Speaker only manages, and no

motion can be made. But if a witness be at the Bar, and the Mace upon the Table, then any Member may propose any question to the Speaker to ask a witness. Mr. O.—On the 3d of March, 1620, Sir Thomas Hobby says, "No man ought to speak, but the Speaker, when any brought into the House; and it should be resolved, before called in, what to say."—See on the 2d

much debated on the 13th of November, 1696, in the case of Sir J. Fenwick, and the arguments on both sides appear in the printed account of those proceedings: it was also much disputed when Mr. Horne was brought in custody, in 1774 \*; But, notwithstanding the great inconvenience that attends it, it was in both instances found to be the invariable rule of the House, and was accordingly observed; the Members, in both cases, putting down upon paper such questions as they thought necessary to be asked, and delivering them to the Speaker, before the prisoner was brought in †.—In the 4th volume of Grey's Debates, p. 275, when Harrington, then in custody by order of the Privy Council, is brought to the Bar, the Speaker, before he is called in, desires to know to what points 'he is' to examine him.—See also Sir William Temple's speech, in the 8th volume of Grey's Debates, page 64; and the entry in the Journal, and in Grey's Debates, of the 23d and 30th of April, 1675, on the examination of Dr. Burnet and the Lord Mayor ‡.—

This

of March, 1625, the Lieutenant of the Tower is brought to the Bar, with the Mace, to answer the *Questions delivered in*; and the questions are "proponed to him by Mr. Speaker." So upon the next day, the 3d of March, when the Lords and others of the Council of War, are called in, attended by the Serjeant with the Mace, Mr. Speaker puts the questions to them.

\* See the Proceedings on the 17th and 18th of February, 1774.

† Upon the 17th of April, 1626, Mr. Montague, being ordered to attend upon the 20th to answer to some charges about his books; a select Committee is appointed to consider of interrogatories to be ministered unto him by Mr. Speaker. The Committee on the 19th report the interrogatories in writing.—On the 30th of April, 1675, several questions are proposed by Mr. Poole, in writing, to be put to the Lord Mayor Vynner, when he is called in to be examined

against the Lord Treasurer Danby: The questions being objected to; the sense of the House is taken upon each question, and a negative is put upon them all, except one. So on the 24th of November, 1680, it appears from Grey's Debates, Vol. VIII. p. 62, that, when the Attorney General is called in to be examined touching the issuing a Proclamation, the questions proposed to be put to him, are prepared before he comes in, and then are put by the Speaker.

‡ So on the 14th of January, 1673, before the Duke of Buckingham is admitted, it appears from the Journal, that several questions were agreed to by the House to be proposed to his Lordship; and when he is called in, the several questions agreed to are proposed to him by Mr. Speaker; to which, having given his answer, he withdrew. The same proceeding is had the next day, the 15th of January, with respect to Lord Arlington; the questions to be asked.



This practice, which cannot now be departed from, of no Member's speaking whilst the Mace is off the Table, is however attended with very great inconvenience; since they cannot even suggest to the Speaker such questions as they wish to have asked; but the practice, that the Mace should be off the Table when prisoners are brought to the Bar 'only for examination,' is not so uniform, but that it is much to be wished it could in all cases be dispensed with; the instances of Sir J. Fenwick, on the 6th of November, 1696, and of Mr. Wilkes, were cases of importance; and, with the several other instances, shew that this rule is not essentially necessary; one was a prisoner in Newgate, the other in the King's Bench Prison: It is different when a person is brought to the Bar in custody, like John Horne, as a culprit, for having disobeyed the orders of the House; in such an instance, I should think the Serjeant must stand by him with the Mace; and during that time no person can speak but the Speaker; but in other cases, \* where a person is brought

asked him are all proposed and debated, and agreed to by the House, before his Lordship is called in.

\* If a Lord of Parliament, or Judge, or the Lord Mayor of London, comes to the House *as a witness*, chairs must be set for them, and every thing done, respectively, as if they attended the House on any other occasion, except as to the Mace, which I conceive ought to be *upon the Table*, in order that Members may propose questions to be put to the witness; which cannot be done unless the Mace be upon the Table: And so it was intended to be done on the 2d of February, 1748, if the Earl of Lauderdale (one of the Sixteen Peers of Scotland) had come as a witness *on the part of Mr. Maitland*. Mr. O.

On the 27th of May, 1779, Lord Belcarras, a Peer of Great Britain, but not one of the Sixteen Peers of Scotland, was examined before the Committee on the papers

relating to Sir William Howe's conduct in America; and had a chair set for him within the Bar; and was received with the same formalities as Lord Cornwallis had been before in that Committee.

On the 12th of February, 1701, the Earl of Abercorn, a Peer of Scotland, and on the 3d of May, 1779, the Earl of Belcarras, are ordered to attend the House of Commons. Lord Abercorn attends at the Bar on the 16th of February, like any other Commoner. This, however, was before the union of the two kingdoms, which occasioned the alteration in the manner of receiving the Earl of Belcarras, in 1779 — On the 5th of January, 1710, the Earl of Gallway, and the Lord Tyrawly, of the kingdom of Ireland, are both ordered to attend the House of Lords: And on the 22d of March, 1758, the Lord Tyrawly is ordered to attend a Committee of the House of Commons.

as a witness, or to be examined as Sir J. Fenwick, or to attend as Mr. Wilkes, here, though they are at the time prisoners, if the Mace is left upon the Table, the Members, though they cannot debate, may suggest to the Speaker such questions as arise out of the examination, and appear to them necessary to be put.

If any Member, or the person at the Bar, objects to the propriety of any question that is asked, and the question is insisted on, the witness must immediately be directed by the Speaker to withdraw, and this without taking the sense of the House by a question; for no question can be moved or put whilst counsel or witnesses are at the Bar.

When any person is brought to the Bar as a delinquent, to receive judgment of commitment, or any other punishment, or to be discharged out of custody, the Mace must be at the Bar; and, till the Standing Order of 1772, such person must of course have received the orders of the House upon his knees. The alteration made by that order was adopted from the humanity of the House; \* which often has occasion to inflict punishment on persons, that would be more sensibly affected by this ignominious manner of receiving their sentence, than by the severest species of penalty the House can impose. On the 17th and 18th of May, 1614, this rule is dispensed with, in favour of Mr. Martyn, who was reprimanded for an improper speech he had made at the Bar, as Counsel in a cause: He had been a Member in a former Parliament.

\* On the motion of Mr. Thomas Townshend, now Lord Sydney.

## RULES OF PROCEEDING.

### IX. *Peers, and Persons of Rank not Peers, admitted into the House of Commons\*.*

1. **I**N the third volume of the Parliamentary History, page 29, is a very curious account of Cardinal Wolsey's coming into the House of Commons, with great pomp, to solicit the passing the Bill of Subsidy; and the speech of Sir Thomas More, who was then Speaker, upon the occasion.

2. On the 2d and 4th of March, 1548, it is resolved to require that the Lords, who were evidence in the House of Lords on the Bill of Attainder against the Lord Admiral, may come into the House of Commons, and declare that evidence, *viva voce*.

3. On the 18th of April, 1554, the Bishop of Durham came into the House, and spoke in favour of his Bill.

4. On the 14th of November, 1558, several Lords came into the House, and the Lord Chancellor declared the necessity of a subsidy; but this was in the nature of a conference, as the Speaker sat by them on another bench.

5. On the 15th of May, 1604, Lord Hertford comes into the House, and was admitted to come within the Bar, and to sit upon a stool, with his head covered.

\* See further upon this subject in the third volume of this Work, under title, "Lords admitted into the House of Commons."

6. On the 17th of May, 1614, two Lords admitted with great ceremony, and sat down, covered.—See also the 19th of June, 1628.

7. On the 21st of December, 1640, the Lord Keeper Finch admitted, at his own desire, to be heard.—See also the 1st of November, 1641, and the 1st of July, 1663.

8. On the 25th of February, 1661, Lord Derby, and the Lord Chief Justice Bridgman, admitted within the Bar to give their testimony.

9. On the 13th of December, 1667, Lord Chief Justice Keeling admitted to be heard in his defence.—See also an account of this in the first volume of Grey's Debates, page 67.

10. On the 14th of March, 1667, see the mode of receiving the Commissioners of Accounts, in the seats by the Bar.

11. On the 13th, 14th, and 15th of January, 1673, the Duke of Buckingham and Lord Arlington admitted.—See a more particular account of the form in Grey's Debates, Vol. II. page 249.—See the case of the Duke of Schomberg, on the 16th of July, 1689.

12. On the 30th of April, 1675, the Lord Mayor admitted, and has a Chair to sit down in at the Bar\*.

\* This Lord Mayor was Sir Robert Vyner, who was called in to be examined, as an evidence to prove the articles of impeachment at this time exhibited against the Lord Treasurer Danby. It appears from Grey's Debates, Vol. III. p. 82, that though the question for allowing a chair to the Lord

Mayor was debated upon a division, yet, that when called in, he made no use of it.—Sir Edward Seymour, the Speaker, was against allowing him a chair. See an anecdote of this Sir Robert Vyner in the Spectator, No 462.

13. On the 28th of October, 1680, Lord Chief Justice North has a chair \* set for him within the Bar.

14. On the 24th of November, 1680, the Attorney General was called in: It appears from Grey's Debates, eighth volume, page 61, that after consideration, how he should be received, an order is made, "That Mr. Attorney General do stand within the Bar; the Mace standing by him without the Bar."

15. On the 13th of March, 1688, the House being informed that the Sheriffs of London were attending at the door; and also that the Recorder of the said City, and one of the Members of this House, together with the four Members, that serve for the said City, were appointed to attend the House; a debate arose in what manner the Sheriffs should be called in; and it was agreed, That the Sheriffs should be conducted in by the Serjeant, with the Mace, to the Bar, and that they should make three obeysances, and the Bar to be down †.

16. On the 4th of April, 1689, when the Count Schomberg and Mr. Bentinck attended, to take the oaths for their naturalization, they had chairs set for them within the Bar, in which they sat down covered; then came uncovered to the Table, and took the oaths.

17. On the 13th, 14th, and 18th of June, 1689, the Chief Baron, and several of the Judges, attend 'at the desire' of the House, and a ‡ chair set for them within the Bar.

18. On

\* It is said in Grey's Debates, 7th vol. page 378, that Lord Chief Justice North "sat down" in the chair prepared for him—but I should doubt of this; as it appears from all the other instances, that this cere-

mony is confined to Peers only.

† It was also agreed, that Members ought not to be brought to the Bar, unless when they are accused of any crime.

‡ Though several Judges attended, *one chair*

18. On the 12th of November, 1690, \* Lord Torrington, then in custody of the Marshal of the Admiralty, admitted at his own request to be heard; ‘the Mace laid upon the Table.’

19. On the 27th of April, 1695, the Duke of Leeds, after the House had resolved to impeach him, desires to be heard; is admitted, and heard, ‘the Mace being all the while upon the Table.’

20. On the 14th of April, 1701, Lord Somers admitted, at his own request; and on the 29th of January, 1701, Lord Peterborough; and on the 14th of March, 1710, the Bishop of Carlisle. Nothing is said in the Journal, of the Mace, in either of these instances.

*chair* only is set for them, as they were not to sit down in it. Mr. O.—See a very long debate in the House of Lords upon the question, Whether the Scotch Judges, who were ordered to attend upon the Bill depending, for punishing the City of Edinburgh, on account of the murder of Captain Porteus, should be examined at the Bar, or at the Table, or upon the Woolfacks? *Lords Debates*, Vol. V. p. 180. See also the *Lords Journals*, on the 2d of May, 1737, where it appears, that the Lords of Justiciary appeared in their proper robes, and that they were examined *at the Bar*, where the Lords had ordered, that chairs should be set for them.

\* Lord Torrington is introduced, the Serjeant attending with the Mace; his Lordship sits down in a chair within the Bar,

covered; as soon as he sat down, *the Mace was laid upon the Table*; when his Lordship withdrew, the Mace attended him.—Colonel Granville, in the debate on the proceeding of bringing Sir John Fenwick to the Bar, says, “If the Mace be not upon the Table, it “would be a great hardship to the Members “that they cannot speak, and a greater “hardship upon the prisoner, that he cannot “ask any questions. Lord Torrington was “brought prisoner from the Tower, and “upon account of his quality, the House did “not let him go to the Bar; but while he “was in the House, the Mace was upon the “Table; and he gave an account of the “whole campaign, and every body was at “liberty to ask what questions they pleased.” *Proceedings against Sir J. Fenwick*, p. 10.

## OBSERVATIONS.

From the earliest account of Peers being admitted into the House of Commons, the mode of receiving them seems to have been very much the same as it is at present: that is, that they were attended from the door by the Serjeant, with the Mace, making three obeysances to the House; that they had a chair set for them within the Bar, on the left hand as they enter, in which they sat down, covered; and if they had any thing to deliver to the House, they stood up and spoke uncovered, the Serjeant standing by them all the time with the Mace; and that they withdrew, making the same obeysances to the House, and the Serjeant, with the Mace, accompanying them to the door. The difference between the mode of reception of Peers \* and Judges has been, that the Speaker informs the Peer, "that there is a chair for his Lordship to repose himself 'in'; †" to the Judge the Speaker says, "that there is a chair for him to repose himself 'upon';" i. e. as explained by the usage, for the person to rest with his hand on the back of it. In the case of the Duke of Leeds, it is expressly said, that the Mace continued upon the Table; I do not know from whence

\* Lord Tyrawley, an Irish Peer, had indeed a chair to sit down in without the Bar, but this was on account of his lameness; for this is always done, in case of infirmity, to any person whatever: otherwise, being a Peer only in Ireland, he must have stood at the Bar, like other Commoners. Before the Union, the Earl of Abercorn, who was both a Scotch and Irish Peer, stood at the Bar on the 16th of February, 1701. Mr. O.—But see the 19th of June, 1628, where Lord Cork, an Irish Peer, is permitted to sit on a

stool, within the Bar, during the hearing of Counsel on a Bill, in which he was interested. —The House of Lords having occasion to examine Lord Primrose, a Peer of Great Britain, on the 26th of February, 1738, a chair was placed for him at the Table, and there he was examined.

† See the proceeding in the Lords Journals, of the 2d of May, 1737, as to the manner of receiving the Lords of the Justiciary in Scotland, who were ordered to attend.

this distinction from the other instances arose; unless that a resolution had passed for impeaching the Duke of Leeds; and that, upon this account, it was not thought necessary to shew the same mark of respect to him under such circumstances, as was usual to persons of his rank. In Lord Torrington's case, he is 'introduced' with the Mace; but when he sits down, the Mace is laid upon the Table\*. When Lord Sandwich and Lord March, now Duke of Queensberry, were admitted, on the hearing of Mr. Wilkes's petition, on the 31st of January, 1769, they were received with all the ceremonies that are above described.

\* On the 1st of June, 1758, the counsel proposed to examine the Earl of Westmorland, in proof of the allegation of an act of violence committed by the Earl Ferrers, at the seat of the Earl of Westmorland. Then a chair was set by the Serjeant, a little within the Bar, on the left hand of the entrance into the House; and the door being opened, his Lordship came in uncovered, making his obeysances in the passage and at the Bar, and came up to the chair set for him; and his Lordship was acquainted by the Chairman of the Committee, that he might, if he pleased, repose himself in the

chair; and he sat down, and was covered, and rose up presently uncovered, and gave his evidence; then his Lordship sat down in the chair, covered, and on a question being put by the counsel, he rose again, uncovered, and gave his answer. His Lordship then withdrew, making three obeysances at the Bar, and in the passage. Mr. O. — See a similar proceeding at the examination of Lord Cornwallis, and Lord Belcarras (a Scotch Peer, and not one of the Sixteen) before the Committee on the Papers relating to Sir William Howe's conduct in America. See the note, p. 137.



## RULES OF PROCEEDING.

X. *Whether the House of Commons can administer an Oath.*

1. **O**N the 12th of March, 1609, it is referred to the Committee for Privileges to consider, Whether in the hearing before them of a contested election for Bridgnorth, they can administer an oath.—On the 13th the Committee report that there is a difference of opinion amongst them, upon this question; and therefore on the 14th it is left to be debated in the House; but nothing further appears upon the subject.

2. On the 5th of June, 1610, the King having, at the desire of both Houses, issued a proclamation that the oath of Allegiance should be tendered to all persons of what degree or quality soever within the kingdom, the House of Commons are under some difficulty, by what authority it should be administered to them.—After some difference in opinion, it was conceived that “since the law did authorize any two Justices of the Peace to minister it—” and that in this House there were divers Justices for the county of Middlesex, and that the local and peculiar service of any Member did not suspend or abridge his power as Justice of the Peace;” therefore, that the oath might be fitly and lawfully administered by them, to such of the House as would voluntarily take it, enforcing no man unto it.—Accordingly on that day, and the following days, several Members took the oath; it being read by Mr. Chancellor of the Exchequer, who appears to have been a Justice of the Peace for Middlesex\*.

\* See particularly the 11th of June, and the 3d of July, and also the Lords Journals of the 26th of May, and 7th and 8th of June, 1610.

3. On the 19th of April, 1614, it is referred to the Committee of Privileges, to view precedents and to consider of giving an oath by this House, concerning the returns of Members, and Jurisdictions of this House; and Sir Dudley Digges moves, That if the Committee shall not find, by precedents, that the House have any such power, a Bill may be drawn for that purpose; and a Bill is ordered accordingly. — There does not appear any Report from the Committee, or that the Bill was ever presented.

4. On the 15th of March, 1620, upon the Commons having complained to the Lords against Sir Giles Mompeffon, as having been the author of several grievances, Lord Southampton moves, “As the Lower House could not, nor did take the examinations by them delivered to us, upon oath, that therefore the witnesses may be sent for, and sworn to their examination. This motion was seconded by the Lord Chancellor Bacon, who adds, “The oath is to be given publicly in the House, for it cannot be given at a Committee \*.”

5. On the 16th of March, 1620, this doctrine is confirmed by Mr. Glanville, who says, in the House of Commons, “This House hath no power to take an oath;” and Sir Edwyn Sandys adds, “The Lords may take an oath, we cannot †.”

6. On

\* See the Lords Journals of the 15th, 16th, and 17th of March.

† It appears from the Journal, that Sir Edward Coke was present, and took part in this debate. On the 5th of March, 1623, Mr. Serjeant Glanville reports the case of the election for the county of Cambridge, where it had been attempted to introduce affidavits before the Committee; — “Touching the said affidavits, it was conceived by the said Committee, and so reported to

the House, and ordered accordingly, That they ought not to be admitted or read, as proofs at this or any other cause, touching elections or returns for the Parliament; for that the affidavits are, for the most part, cautiously penned by the parties sworn, or by their counsel, expressing only part of the truth, to the advantage of that side, which they favour; and the parties which make such affidavits, are not seen, to have their persons and quali-  
“ties

6. In the case of the punishment of Floyd, for speaking defamatory words of the Elector Palatine, there is much debate touching the power of the House of Commons to administer an oath. See the Journal of the 30th of April, 1621, and the beginning of May; and Sir Samuel Sandys's Speeches on the 4th and 5th of May, and Mr. Hackwill's in the 2d volume of Proceedings of the Commons, 1620-1, p. 21. 27, et ultra. See particularly the opinion of Sir Edward Coke, at the conference with the Lords on the 5th of May, in the 2d volume of Proceedings of the Commons, 1620-1, p. 31.

7. On the 4th of December, 1661, a message is sent to the Lords, to desire that certain witnesses may be sworn at their Lordships Bar, in order to be examined before the Commons, upon a Bill then depending for making void certain fines levied by Sir Robert Powell. The Lords refer this message to their Committee of Privileges, to search for precedents; and on the 7th of December, they report, That they can find none to warrant such a proceeding. This is communicated to the Commons at a conference; and on the 13th of January, when this matter is heard by counsel and witnesses at the Bar, it does not appear that the witnesses were sworn.

8. On the 9th of November, 1666, the Commons resolve, That the Lords be desired to name a Committee of their House, to join with a Committee of this House, "to the end" that the

"ties considered of, nor are cross-examined  
"for the discovery of the whole truth: or  
"if affidavits should be allowed, yet, to allow  
"these affidavits taken before the Masters of  
"the Chancery, for things not pertaining  
"to that court, to be used as good proofs in  
"Parliament, were derogatory to the honour  
"and power of this House.—And it  
"was publicly attested, by divers of the

"most antient Parliament men, now Members  
"of this House, that in their first times  
"of sitting in Parliament, no such course of  
"affidavits in Chancery, touching Parliament  
"business, was practised or heard of.  
"—But this form is a mere novelty, and a  
"late dangerous innovation, fit to be abolished."  
Glanville's Reports of Election Cases, p. 84.

public accounts may be taken and examined upon oath.—The Lords on the 12th of November, refer this to the Committee of Privileges, who report on the 16th.—And on the 23d of November, the Lords resolve to acquaint the Commons at a conference, “ That they are willing and ready to agree with them ; but as to the manner, they do not find it warranted by the course of Parliament, that any Committee of Lords and Commons, upon any occasion, have had power given ~~them~~ to examine upon oath.” This conference is held on the 28th of November, and on the 10th of December, the Commons insert a clause in a Bill then depending, to authorize the taking these accounts upon oath.

9. On the 3d of June, 1675, at a conference reported touching the disputes at that time subsisting between the two Houses, on the subject of the Lords Jurisdiction ; the Lords say, “ The Lower House of Parliament are no court, nor have authority to administer an oath, or give any judgment.” In the reasons of the Commons, which are reported by Sir Thomas Lee on the 4th of June, the Commons say, “ Your Lordships do highly intrench upon the Rights and Privileges of the House of Commons, denying them to be a court, or to have any authority or power of judicature ;” but the Commons take no notice of the other part of the Lords assertion, “ That they have no authority to administer an oath.”

10. On the 24th of October, 1678, upon the matter of the murder of Sir Edmondbury Godfrey, it is ordered, “ That the Justices of the Peace for the county of Middlesex, and city of Westminster, do withdraw, and take the examination of Mr. Oates upon oath.” See also the 25th and 28th of October.

11. On the 18th of November, 1678, the Commons send for the Chief Justice of the King's Bench, to administer an oath to Bedloe,

who offers to give testimony.—The Chief Justice Scroggs comes, and withdraws into the Speaker's chamber for that purpose \*.

12. On the 15th of June, 1715, it is ordered, “ That such Members of the Committee of Secrecy, as are Justices of the Peace for the county of Middlesex, do examine Matthew Prior, and † Thomas Harley, Esq.”

13. On the 27th of January, 1715, such Members of the Committee of Secrecy, as are Justices of the Peace for the county of Middlesex, are impowered to examine, in the most solemn manner, such persons as are necessary to be produced as evidence upon the trial of the Earl of Winton.—So on the 18th of June, 1717, such of the Managers of the trial of Lord Oxford, as are Justices, are impowered to examine the necessary witnesses in the most solemn manner.—See the 12th of March, 1719.

14. On the 12th of January, 1720, at the Committee appointed to enquire into the affairs of the South Sea Company, such persons as the said Committee shall think proper to be examined, are to be examined in the most solemn manner ‡.

15. On the 3d of June, 1721, a Committee, appointed to enquire into the authors and publishers of a seditious Libel, is to have

\* See in Grey's Debates, Vol. VI. p. 213, the particulars of what passed upon this occasion.

† It appears from Mr. Walpole's report of this examination on the 19th of August, “ That Mr. Harley, before he was examined, was sworn by such Members of the said Committee as were Justices of the Peace for the county of Middlesex, and the city of Westminster.”

‡ This is the first instance I have met with of the power given by the House in this form, without mentioning that it shall be executed by such Members as are Justices of the Peace for Middlesex or Westminster.—See also the 19th of January, 1720, where Members of the House are to be examined in this manner before the Committee.

power to examine in the most solemn manner. See the 16th of February, 1722.

16. On the 13th of February, 1721, it was proposed, That the witnesses who were to be examined in the matter of the charge of Sir John Cope, against Mr. Baron Page, should be examined at the Bar, in the most solemn manner.—The previous question was moved and carried on a division of 144 to 142, against putting that question.—See the 17th of April, 1732, a similar proceeding on a Bill relating to the Derwentwater estate.

17. On the 18th of December, 1722, the House order, “ That  
“ such Members of the Committee appointed to enquire into the  
“ project, commonly called, *The Harburgh Lottery*, as are Justices  
“ of the Peace for the county of Middlesex and city of West-  
“ minster, do examine, in the most solemn manner, such persons  
“ as they think fit, on the said enquiry.”

18. On the 24th of February, 1724, the Committee appointed to draw up Articles of Impeachment against Lord Macclesfield, are empowered to examine such persons as they shall think proper to be examined, in the most solemn manner.

19. On the 18th of April, 1729, this power is given to the Committee appointed to enquire into the state of the Gaols—and on the 15th of February, 1731, and on the 7th of February, 1732, to the Committee upon the affairs of the Charitable Corporation—and on the 15th of February, 1732, to the Committee appointed to enquire into the affairs of the York Buildings Company.

20. On the 3d of March, 1734, this power is given to a Committee of the whole House, to examine Witnesses in the most  
solemn

solemn manner\*, The Committee sat on the 31st of March; and on the 2d of April, report, That they had examined in the most solemn manner, and reported resolutions.

21. On the 29th of March, 1742, the Select Committee, appointed to enquire into the conduct of Lord Orford, have power to examine in the most solemn manner.—See the 29th of April, 5th and 21st of May, where Members of the House are to be examined by this Committee.

22. On the 24th of March, 1746, on a complaint that a person had been assaulted for a matter relating to Lord Lovat's trial—A Committee is appointed to examine into the matter of this complaint, and are empowered to examine in the most solemn manner.

23. On the 7th of March, 1757, a Committee, to whom it was referred to consider of several papers relating to the officers of Courts of Justice in England and Wales, is empowered to examine witnesses in the most solemn manner.

## OBSERVATIONS.

The conclusion, to be drawn from these Precedents, is, that the House of Commons have not, at any period, claimed, much less exercised, the right of administering an oath to witnesses; not even in cases of Privilege or of controverted Elections, where

\* This is the first instance that has occurred to me of this mode being used at a Committee of the whole House.—There is one other on the 13th of March, 1744, of a

Committee of the whole House, to enquire into the miscarriage of the Mediterranean Squadron.

their right of Judicature was acknowledged, and on questions, upon which they were admitted to be the sole Court competent to determine.—Sir Edward Coke, at the time when he was the most strenuous in asserting the powers of the House of Commons, and would have gone as far as possible to extend its authority, says, in the debate upon Floyd's punishment on the 2d of May, 1621, "No question, but this is a Court of Record,—and that it hath power of Judicature in some cases.—We have power to judge of Returns, and Members of our House.—We make a War-rant to the Great Seal; therefore a power of Record." But he does not add, or even suggest, that it belongs to this Court of Record, or that it is necessary it should have the power, to administer an oath.—In all their proceedings therefore, where the House of Commons have had occasion, as the grand inquest of the nation, to enquire into matters of public grievance, upon which they might afterwards found prosecutions, or which might be remedied by Act of Parliament, those enquiries appear, till towards the end of the last century, to have been made without the sanction of an oath.—If the witnesses prevaricated, or delivered false evidence, the House of Commons had no other redress, than to exercise the power of commitment, as for a breach of their privileges, or for a contempt of the court before whom the parties were examined.—But in the year 1678, on the breaking out of the Popish plot, it was thought expedient, in order to give an appearance of greater weight to the testimony of the witnesses in that business, to direct certain Members, who happened to be Justices of the Peace for Middlesex and Westminster, to withdraw, and to take Mr. Oates's \* evidence upon oath; and soon after the

\* Oates was afterwards, in 1685, convicted of perjury, and a very severe sentence pronounced, and in part executed upon him.—A sentence so cruel and severe, that im-

mediately after the revolution, on the 6th of June, 1689, the House of Lords addressed the King to pardon him, and to discharge him from the remaining part of his punishment.



the Lord Chief Justice of the King's Bench is desired to attend for this purpose; and he withdraws into the Speaker's chamber to administer an oath to Bedloe.—It happens unfortunately for this first exercise of this extraordinary power, that it was on an occasion, in which I believe it is now no longer matter of doubt, but that the witnesses, particularly Oates and Bedloe, were most notoriously perjured: and that, whatever latent designs there might be at that time amongst the Papists, or to what lengths they had proceeded, the stories told by these two men, and by several others of the witnesses, were gross and palpable forgeries.—This is indeed but one of many proofs, to shew that, in the case of men not under the influence of religion or conscience, the sanction of an oath is really but of little avail.—But were it otherwise, it has been much doubted, how far the act of these Justices of the Peace, or even of the Lord Chief Justice himself, could be justified upon any principles of law.—Certain powers are by Act of Parliament given to persons in the commission of the Peace, as well of enquiry as of punishment; in the exercise of these powers, they are authorized, in order to investigate the truth, to administer an oath to those who can give information upon the subjects of their jurisdiction; but this by no means extends to authorize those Justices to administer an oath in cases, into which they have no power to enquire.—And it has been the opinion of very able and eminent lawyers, not only, that such a proceeding in Justices of the Peace is informal and nugatory, but that it is illegal; and that they are, under

ment.—The Commons wished to go farther, and having declared these judgments to be cruel and “illegal,” order in and pass a Bill to reverse them.—A dispute arose between the two Houses, upon amendments made to this Bill by the Lords, the purport of which were, not to declare these sentences “illegal” but “unprecedented, and that the practice ought to be prevented for the

“time to come.” Many conferences were held—for which see the entries in the Journals, particularly of the 13th and 26th of July, and 2d of August, 1689.—The Bill, from these differences, was lost.—The Lords had, upon the 31st of May, on a Writ of Error brought before them, affirmed the judgment.—See the protest upon that decision.

such circumstances liable to a prosecution for an improper exercise of the powers vested in them; or, to speak more properly, for exercising powers not vested in them by law.—This observation, if it has any foundation, applies to all the subsequent cases from the year 1715, to 1757—where the House of Commons gave directions to their Committees, to examine “in the most solemn manner.”—Not having themselves, as a House, the power to administer an oath, or indeed would it make any difference if they had, it is impossible they can delegate such power to any of their Committees, or can legally authorize any of their Members to take an examination upon oath; and therefore there can be very little doubt but that these and all other similar instances were irregular, and had better been omitted. It is now near forty years since this practice of examining, “in the most solemn manner,” has been laid aside; and I flatter myself, that for a considerable part of that period, my endeavours, in instances where it has been often proposed, have not been wanting to prevent its being revived.—The House of Commons have, in the course of that time, been engaged in many very great and important enquiries:—They have had occasion to go into long and accurate examinations of witnesses, upon whose evidence have afterwards been founded some of the most important measures, that ever occupied the councils, or interested the welfare of this country.—The repeal of the American Stamp Act,—The various regulations respecting the possessions in the East Indies,—The commercial arrangements with Ireland and France,—and the impeachment of Mr. Hastings—all arose out of examinations, not taken upon oath; and there is no reason to suppose, that these examinations had not, for their foundation, as great a degree of truth, as if they had been taken “in the most solemn manner.”—An event happened some years ago, in which it was desirable that the manner of taking the evidence should be as solemn as the power of the court, and the

circumstances of the case would admit; and in that instance, if ever, the examination of the witnesses ought to have had the sanction of an oath.—I mean the examining of the physicians, touching the state of his Majesty's health.—Much consideration was had, before this subject was moved in the House of Commons; and several previous consultations were held, in what mode this business might be so conducted, as that the real situation of his Majesty's health might be best ascertained. It was at first intended, in order to obtain this sanction of an oath, to propose, that a joint Committee of Lords and Commons should be appointed to take the examination;—in which case, as in former instances\*, the witnesses would have been sworn at the Bar of the House of Lords.—When this idea was laid aside, it was proposed to direct the Committee, appointed by the House of Commons, to examine the witnesses, “in the most solemn manner.” However, after great consideration, and looking into the several precedents, this plan was also abandoned; and it was thought most adviseable, by those whose duty it was to bring this important matter before the House of Commons, that this examination should proceed, as the others I have just mentioned had done, in that manner in which the House of Commons were authorized to proceed by the practice of their ancestors; not liable to the objection, that might have been made to the substituting any fictitious authority for the purpose of obtaining the sanction of an oath; though upon a subject, which, in its consequences, involved the greatest, and most important rights, as well of the sovereign, as of the people.—Another instance has since occurred, in the year 1794, where the House of Commons appointed a Committee of Secrecy, to examine papers, laid before them by the King's command, relating to certain corresponding societies, associated for the purpose of esta-

\* See under title, “Joint Committees of Lords and Commons,” in the third volume of this Work.

blishing a convention of the people.—Here too it was not thought expedient to apply to the House for any powers, to examine in the most solemn manner.—I trust therefore that, the House of Commons having desisted now for so great a length of time, from taking any, even the most solemn examinations, “upon oath,” it will never be proposed to recur to that measure again—as it is highly essential, in this, as well as in every other part of their conduct, that the House of Commons should not appear desirous of exceeding the limits of their acknowledged authority; or of going beyond those bounds, which are set to their power by the law and constitution of the country.

# RULES OF PROCEEDING.

## XI. *Questions on reading Journals or Papers.*

1. **O**N the 22d of March, 1663, question put for reading an Act of Parliament, and resolved in the affirmative.

2. On the 23d of January, 1692, complaint being made of a book, and question put, that it be brought up to the Table, it passed in the negative.

3. On the 16th of April, 1697, questions for reading two Acts of Parliament put, and carried in the negative.

4. On the 15th of January, 1699, motion made for reading an address of both Houses to the King, and a debate arising, debate is adjourned.

5. On the 12th of May, 1714, Sir William Wyndham has leave to make a motion; which motion is for reading an Act of Parliament.

6. On the 17th of December, 1792, complaint being made of a publication, as tending to produce tumults and disorder; the question being put, that this paper be delivered in at the Table and read; it passed in the negative.

## O B S E R V A T I O N S.

It has been a very common error, and used frequently to be mentioned in the House of Commons, that every Member has a right, upon his own motion, to insist upon any Act of Parliament, or Journal, or paper, or account upon the Table, to be read, without the House having any power to interfere to prevent him.—This error takes its rise from the acknowledged propriety of permitting every Member to have as much information as possible, upon every question, before he gives his vote; but it is infinitely absurd to carry this doctrine to the length to which it has been sometimes urged: Even if there were no instances to be found to contradict it (and the cases above-mentioned are decisive upon this point) the delay and interruption, which such a right would put into every Member's power to give to the proceedings of the House, sufficiently evince the impossibility of the existence of such a rule; and therefore the practice is, that, if any Member moves for an Act of Parliament, a Journal, or paper, to be read, which the House sees is really for information, and not for affected delay, and no Member objects to it, the Speaker directs it to be read, without putting a question; but if any Member objects to it, the Speaker must take the sense of the House, by a question, upon this difference of opinion, as he must upon every other. Where papers are laid before the House, or referred to a Committee for their consideration \*, every Member has a right to have these papers read through once at the Table, before he can be compelled to give any opinion upon them; but when they have been once read to the House, or

\* It was said by Smith, on the 25th of January, 1717, that when papers were referred to a Committee, they were used formerly to be first read, but of late, only the

titles; unless a Member insisted they should be read, and then nobody could oppose it. Mr. O.

in the Committee, they are then, like every other paper that belongs to the House, to be moved for to be read; and, if the matter is disputed, it cannot be decided but by taking the sense of the House.—Mr. George Grenville used to maintain the same doctrine as to the delivery of books or papers; “That, if any Member complained of any book or paper, as containing matter which infringed on the privileges of the House, he had a right, without any question put, to deliver it in at the Table, and to have it read;” and he insisted upon this, on the 25th of November, 1767, when he complained of a seditious paper to the House; Mr. Dyson, and several other Members, objected to the absurdity of such a rule; and, the question of order being adjourned to the 27th of November, to give time to look into precedents\*, the matter was, upon that day, almost unanimously, agreed to be further adjourned for six months. Indeed, this right of delivering in a paper—or the other, of having papers read at any time—or one mentioned before of separating a question—or any other right claimed by a Member, to be exercised by him against the opinion of every other Member of the House†, is so extraordinary, that it is a matter of wonder how such a doctrine ever came to be advanced‡.

\* Had the instance of the 23d of January, 1692, then occurred, it would have immediately put an end to the doubt.—See the 8th of February, 1771, and the 15th of May, 1775.

† Except as is mentioned before, in the note\*, p. 113, where the Member insists upon putting in execution a standing order or subsisting resolution of the House.

‡ When a question of great importance is about to be agitated, and which, from its nature, requires the utmost secrecy, it has not been unusual, to order the doors of the House to be locked, and the keys to be

brought upon the Table; in order that no Member may go forth to give information of the subject in debate. Upon this, if upon any occasion, it appears reasonable, that the Members intending to introduce the proposition to the House, should have a right to order the doors immediately to be shut, and this even without a question put upon it; for if he only makes a motion, ‘that the doors be locked,’ and in the debate upon this question should give any hint of the subject which he is about to propose, the effect of shutting the door would be frustrated by Members going out during this debate, and

com-

communicating the purport of it to the parties who may be interested; and who, from that information, might avail themselves of the opportunity to avoid commitment, or such other process, as the House of Commons should direct. It appears from Lord Clarendon's History of the Rebellion, Vol. I. p. 138, Book the 3d, that this would actually have happened, upon the question of impeaching Lord Strafford; and that, had he received information of what the House of Commons were about, "He would undoubtedly have procured the Parliament to be dissolved;

"or have taken some other desperate course to preserve himself, though with the hazard of the kingdom's ruin." Yet even in cases of this magnitude, and where the public safety seems so immediately interested, no Member has a *right* to insist upon the doors being locked. A motion for this purpose must be made and seconded, and a question put, upon which question a debate may arise, and the sense of the House must be taken.—On the 15th of May, 1660, on the question being put, 'That the door be locked,' it passed in the negative.



## RULES OF PROCEEDING.

### XII. *On Questions where Members are interested.*

1. **O**N the 12th of June, 1604, Mr. Seymour, a party in a Bill then under consideration, goes forth during the debate, "agreeable with former order and precedent in like cases."

2. On the 4th of February, 1664, a Member appearing to be 'somewhat' concerned in interest, his voice is disallowed, after a division \*.

3. On the 20th of May, 1626, Sir John Eliot withdrew, before the question is stated upon his conduct †.

4. On the 21st of October, 1667, a witness at the Bar having reflected on a Member, and he in his place having made his defence, withdrew whilst the matter was in debate.

5. On the 22d of November, 1669, a Member accused of detaining a writ is commanded to withdraw ‡, before the matter is debated.

\* No Member of the House may be present in the House, when a Bill, or any business concerning himself, is *debating*; but while the Bill is but reading or opening, he may. — *Parliamentary Debates*, 1620-1, Vol. I. p. 141.

† See this Case in the first volume, p. 149. "Sir John Eliot of himself withdrew;

"the House refusing to order his withdrawing."

‡ See the Debate upon this subject in the 1st vol. of Grey's Debates, p. 179; where Mr. Finch beginning to argue upon it, is taken down to order, "for speaking to the merits of the cause, without the Member being withdrawn."

6. On the 16th of February, 1697, a debate arising upon a question relating to Mr. Montagu, then Chancellor of the Exchequer, and a question put, "that he do withdraw;" it passed in the negative.

7. On the 17th of January, 1711, after the examination into Mr. Walpole's conduct, and before any question proposed, he was heard \*; and a doubt arising, "whether he ought to withdraw, before a question stated, or any debate had of the matter relating to him," the Journals of the 16th of February, 1693, and of the 15th of February, 1710, were read, and thereupon Mr. Walpole withdrew, "before any debate had, or question proposed." So did Mr. Knight, on the 4th of January, and Mr. Duncombe, on the 25th of January, 1697, and Sir Richard Steele, on the 18th of March, 1713 †, and Mr. Mortlock, on the 18th of May, 1786.

8. On the 5th of April, 1715, Sir William Wyndham being called upon to justify some words he had used, and refusing, a question is moved against him, and then he is heard; and being called upon to withdraw, refuses, and a question is put for his withdrawing.

9. On the 28th of February, 1720, after the examination relating to Mr. Stanhope was concluded, and before any question

\* In the proceeding against Mr. Walpole, the Commissioners report was read, and Thursday appointed to consider the report. Mr. Walpole desired to be present at the debate, until a question was formed upon the Speaker's paper; but denied, and he accordingly withdrew.—The rule here seems to be, "that if the charge against a Member be contained in a report, &c. then he

"is to withdraw before the question is moved or stated; but if nothing previous to the question contain a charge, the question is the charge, and that must be stated before he withdraws." Mr. O.

† The Journal of the 15th of July, 1661, of the proceeding relating to Mr. Prynne, was read; who withdrew before the House entered upon any debate.

concerning him was 'propofed,' he withdrew.—So in the cafe of Sir George Cafwall, the 3d and 10th of March; and of Mr. Aiflabie, on the 8th of March, 1720; and of Mr. Vernon, on the 8th of May, 1721.

10. After the enquiry into the complaint againft Lord North, for having, as First Lord of the Treasury, interfered corruptly in the election for Milborne Port, Lord North, on the 17th of March, 1780, was heard in his place and withdrew, before any question was ftated.

## O B S E R V A T I O N S.

The rule, laid down in the two firft instances, is not, in many cafes, fufficiently obferved; it was always attended to in questions relative to the feat of the Member, on the hearing of controverted elections; and has been ftremely obferved in cafes of very great moment: But in matters of leffer importance, yet where the private intereft of the Member has been effentially concerned, it has been entirely neglected, contrary not only to the laws of decency, but of juftice; and it would be for the honour of the Houfe of Commons, if this rule, which 170 years ago was "agreeable to former order and precedent in like cafes," was revived and eftablifhed \*.

As

\* On the 13th of December, 1621, in the proceedings againft Lepton and Goldfmith, Sir Edward Coke, thinking himfelf interefted, offered to go out, but was, upon ques-

tion, required to ftay, as it was refolved, "that the caufe now did not concern Sir Edward Coke, fo much as the Houfe; he might therefore ftay, till they came to be " cenfured."

As to the doubt conceived in the case of Mr. Walpole, "at what time the Member should withdraw," as it was then very properly decided, so that decision has been uniformly supported by the practice in all the similar instances that have happened since that time.—\* Where there is any proceeding in the House, which affects the character of a Member, as soon as the matter has been examined into, the Member is to be heard, and then to withdraw, even before any question is moved upon his conduct. In the case of Sir William Wyndham, the question that was moved and proposed, arose out of expressions used by him at the time; he therefore ought to have laid before the House what he had to say

"censured."—In the enquiry touching the scrutiny for the City of Westminster, on the 8th of June, 1784, and the 9th of February, 1785, Mr. Fox, though not obliged by the strict orders of the House, very properly observed this rule, and withdrew, before a question was put.

\* The rule laid down by Mr. Onslow, in the note \*, p. 161, seems to be perfectly just and proper. The Member is not to withdraw, till he knows what will be the substance of the charge against him; and till he has had an opportunity of explaining to the House the motives of his conduct in the matter alledged against him.—Where this charge arises out of a report from a Committee, or from an examination of witnesses in the House, the Member accused knows to what points he is to direct his exculpation; and may therefore be heard to those points, before any question is moved or stated against him; and in this case he is to be heard, and to withdraw, before any question is moved—as in the instances of Mr. Walpole, Sir Richard Steele, and Mr. Stanhope, in the House of Commons; and of the Earl of Monmouth, in the House of Lords, on the 15th of January, 1696.—But where the

question itself is the charge, for any breach of the orders of the House, or for any matter that has arisen in the debate, there the charge must be stated, i. e. the question must be moved. The Member must be then heard, in his explanation or exculpation, and then, and not till then, he is to withdraw; as in the case of Sir William Wyndham.—In the case of Mr. Manly, the 9th of November, 1696, and of Mr. Cæsar, the 19th of December, 1705, the words spoken by them are taken down by order of the House, and, by such taking down, become a matter of charge; they are therefore heard, and then withdraw, before any question is moved.—See also in the instance of words spoken by Mr. Dyett, on the 9th of May, 1626, where the words were not taken down.—In the instance of Mr. Shippen, on the 4th of December, 1717, the words spoken by him were reported, as a charge against him, from a Committee; he therefore was heard, and withdrew, before any question was stated. On the motion that was made on the 13th of February, 1740, to address the King, to remove Sir Robert Walpole, it appears from the debate, that Sir Robert was present, and spoke; and that he did not withdraw.

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in exculpation of the charge as soon as the motion was made, and then to have immediately withdrawn.—After the examination of the evidence in relation to Lord Clive's conduct in the East Indies, Lord Clive was heard in his place, before he knew what question was to be moved against him, and withdrew, on the 21st of May, 1773.—So did Lord North, in 1780\*.

\* See the proceedings respecting Major Scott, on the 21st and 27th of May, 1790.

## RULES OF PROCEEDING.

### XIII. *When the Speaker may take the Chair.*

1. **O**N the 5th of January, 1640, it was declared as a constant rule, that Mr. Speaker is not to go to his Chair, till there be at least forty in the House.

2. On the 26th of April, 1729, forty Members not being present, the Speaker adjourned the House.—See the 12th of May, 1729; the 7th of April, 1731; the 21st of April, the 3d of May, the 16th of March, 1731; the 28th of March, 1732; the 10th of May, and 22d of March, 1733; the 8th of April, 1736; the 15th of February, and 16th of March, 1742; and the 24th of April, 1745, et passim.

3. On the 2d of April, 1740, it is said ‘by mistake,’ that the question was decided by a division of less than forty Members;—for see the 6th of April, 1741; the 4th of June 1746; the 26th of March, 1751; and the 10th of June, 1758.

4. On the 16th of March, 1742, forty Members not being present, Mr. Speaker ‘waited till four o’clock,’ and then told the House again, and forty Members not being then present, adjourned the House.—See the 23d of February, 1746; 25th of May, 1747; the 5th of June, 1749; the 13th of March, 1755; the 2d of April, 1755; the 4th of May, 1756; and the 9th of April, 1759.

5. On

5. On the 21st of May, 1747, notice being taken of forty Members not being present, Mr. Speaker told the House, and forty Members not being present, he waited till more Members came in, to make up forty, and then proceeded in the business.—See the 5th of June, 1749, and the 17th of March, 1752 \*.

6. On the 23d of April, 1735, there not being forty Members in a Committee of the House, Mr. Speaker resumed the Chair, and there being then forty Members present, proceeded in business. On the 22d of March, 1733; the 23d of February, 1746; the 2d and 4th of April, 1755; the 9th of March, 1757; and the 10th of May, 1758, Committees of the whole House break up for want of forty Members.

7. On the 4th of April, 1750, it appears from the numbers on the division, that the Speaker was told himself to make up the number of forty present.—See also the 16th of April, 1753; the 9th of February, and the 13th of May 1774; the 18th of June, 1782; and the 19th of December, 1783.

8. On the 20th of March, 1780, the House having continued to sit till after twelve of the clock on Monday night, upon an adjournment for want of forty Members, the Speaker adjourned the House only till Tuesday Morning.

\* See in this Volume, under title— of forty Members not being present, before  
 “ Speaker—his duty in other particulars ” or after four o’clock.  
 a note of Mr. Onslow’s, upon this subject,

## O B S E R V A T I O N S.

This rule, that forty Members should be present, was certainly intended to prevent questions being carried by surprise, and in a thin House ; and, as it is essential to the fairness of proceeding, it has therefore, I believe, been observed inviolably, both as to the number present when the Speaker takes the Chair, and as to his quitting it again immediately, if it is after four o'clock. This distinction of not adjourning immediately, if it is before four o'clock, but of waiting, and, if Members come in so as to make up the number of forty present, proceeding with business, arises \* from four o'clock being the hour prescribed by the 30th of Charles II. and the 13th of William III. before which any Member may take the oaths at the Table ; and therefore, if the Speaker has taken the Chair, and a Member is introduced before that hour, he may be sworn, though forty Members are not present ; for a rule laid down by the House of Commons, as a regulation to themselves, cannot supersede the directions of an Act of Parliament. But if, whilst any other business is depending, notice is taken that forty Members are not present, and it is after four o'clock, the Speaker, by his own authority, immediately, and without a question put, adjourns the House to the next sitting day ; but he cannot, in this case, adjourn over a sitting day, unless the House have previously resolved, " That at their rising, they do adjourn to a particular day," and then he adjourns the House to that day ; and this resolution is frequently come to, when it is expected, that, from the thinness of the House, they may break up for want of forty Members.

It appears from several instances, that the practice of the House has extended this rule to Committees of the whole House ; and

\* Vide the Note †, in Page 84.



that it is equally necessary, if forty Members are not present, for the Chairman immediately to leave the Chair, and for the Speaker to resume it. The distinction about the hour, does not hold in Committees, because the reason, upon which that distinction is founded, is not there equally applicable: When the Speaker resumes the Chair, on the breaking-up of a Committee, the Chairman can make no other report, than informing the Speaker of the cause of their dissolution.—This rule being established by the House only as a restraint on their own conduct, does not extend to prevent the Speaker's taking the Chair, on the Black Rod's knocking at the door, whether with a message from the King or Commissioners appointed by the King, though fewer than forty Members should be present; for if it was otherwise, the Commons might, by their particular order, interrupt the exercise of the King's prerogative, to dissolve or prorogue the Parliament; and therefore, on the arrival of the Black Rod, the Speaker immediately takes the Chair, and receives the message. It has sometimes been doubted, whether, on his return from the House of Lords, the Speaker ought again to take the Chair, if at that time forty Members are not present; I should think he ought, at least to report what has passed in the House of Lords; for it might otherwise happen that, for want of forty Members, the Speaker might be prevented from taking the Chair that day, and from communicating to the House a speech or message from the King, of which, "as a message to adjourn, and several other matters," they ought to be immediately informed; especially as it is always in the power of any Member to prevent the proceeding in any other business than the report of the message, by calling upon the Speaker to count the House\*. It can therefore

\* Whilst the Speaker is counting the House, for the purpose of ascertaining, whether there are forty Members present, it is not necessary to keep the doors shut, as

therefore never be supposed, that a rule, laid down by the House to themselves, merely to prevent surprise, can extend to restrain the Speaker from informing the House of the King's pleasure, signified to him in the House of Lords. When it happens that forty Members do not assemble, the Speaker waits till four o'clock, and then adjourns the House, without any question, taking the Chair for that purpose only \* ; and in this case, he can only adjourn to the next sitting day.—When there is a division in the House, or a Committee of the House ; and it appears, upon the report of the numbers, that forty Members are not present ; and the House, or the Committee, are upon this immediately adjourned ; there can be no decision upon the question then under consideration, though upon the report of the numbers, the majority should be ten to one ; and therefore the declaration, in the instance of the 2d of April, 1740, “ that the question was carried,” is inserted by mistake, as indeed appears from the entry in the Journal of the next day, the 3d of April. In this case, therefore, the matter under consideration continues exactly in the state in which it was before the division, and, as appears from all the instances, must be resumed at this period on some future day †.

The

is done upon a division. Upon a division no Members have a right to vote, who were not present when the question was put ; and therefore all other Members ought to be excluded.—But upon notice being taken, that forty Members are not present, and the Speaker's telling the House ; (the purpose being to prevent any “ *further* ” business being done, or question put) if, during such telling, Members come in so as to make up 40 present, the business may *then* proceed ; and the order of the 5th of January, 1640, and the practice founded upon that order, is

not broken in upon. This must have happened in the instance of the 23d of April, 1735.

\* See instances of this proceeding, in the Minute Book of the 27th of May, 1758, and in the Journal of the 4th of July, 1780, and the 9th of July, 1789 ; and very many other cases, of late years.

† On the 5th of May, 1790, the House having adjourned, for want of 40 Members, as appeared on a division, on a question for bringing up an ingrossed clause, that had been offered on the third reading of a Bill, the

The Speaker, or Chairman of the Committee, is always considered as one of the forty; as appears from the numbers on the divisions.

It is said, on the 20th of April, 1607, that no Bill was read this day, and the House arose at ten o'clock, "being not above " threescore \*."

the Speaker, on the 11th of May, acquainted the House with this circumstance; and the question was then put again, for bringing up the clause.

\* This was at a time when the House of Commons consisted of much fewer Members than it does at present; not only the forty-five Members from North Britain have been added, but the Members for Durham, Newark, Cockermouth, and several other places.—It appears from a list of the names of the Members returned to serve in the first Parliament of James I. in 1603, which is printed in the fifth volume of the Parliamentary History, page 11, that the House of Commons then consisted of 470 Members; and the number of Lords summoned to that Parliament were 78.—In the Parliament elected

in 1620 (a list of the Members of which is inserted in the printed collection of the Debates of that Parliament) the number of Members appears to be 478.—See in the Appendix to this volume, N<sup>o</sup> 3, a List of the names of the persons returned to serve in Parliament in the year 1656, for the several Counties and Corporations within the Commonwealth of *England, Scotland, and Ireland*, and the dominions thereunto belonging, consisting of 447.—Also a list of the Counties, Cities, and Boroughs, which returned Members to Parliament at the time of the accession of Henry VIII. to the Crown; with a list of those Counties, Cities, and Boroughs, to whom the privilege of sending Members to Parliament was granted or restored in the subsequent reigns.

## RULES OF PROCEEDING.

### XIV. *For not admitting Strangers into the House.*

1. **O**N the 5th of March, 1662, upon information that several persons, not Members, had come by the back-door into the Speaker's chamber, and into the gallery, whilst the House was sitting; it is ordered, that the back-door be constantly kept shut whilst the House is sitting.—See the 8th of April, 1670; the 25th of November, 1696; and the 9th of December, 1697.

2. On the 31st of October, 1705, is an order for the Serjeant at Arms to take strangers into custody, that are in the House or gallery whilst the House is sitting; and this order is repeated, from that time, at the beginning of every session.—On the 15th of November following, this order is extended to Committees sitting in the House.

3. On the 19th of March, 1716, the orders for the Serjeant to take strangers into custody, &c. are read, without any question put for reading them; and the Serjeant carries them into execution, without any order of the House.—So on the 13th of April, 1717, on notice being taken that there were strangers in the House.—So on the 10th of March, 1734.

4. On the 9th of December, 1755, the House is moved for these orders to be read; and they are ordered to be printed in the Votes of the day.

## OBSERVATIONS.

When a Member in his place takes notice to the Speaker of strangers being in the House or gallery, it is the Speaker's duty, immediately to order the Serjeant to execute the orders of the House, and to clear the House of all but Members; and this, without permitting any debate or question to be moved upon the execution of the order. It very seldom happens that this can be done without a violent struggle from some quarter of the House, that strangers may remain: Members often move for the order to be read, endeavour to explain it, and debate upon it, and the House as often runs \* into great heats upon this subject; but in a short time the confusion subsides, and the dispute ends by clearing the House; for if any one Member insists upon it, the Speaker must enforce the order, and the House must be cleared. In the violence of debate, it is often threatened to move the

\* The most remarkable instance of this, that has occurred in my memory, was at a time, when the whole gallery and the seats under the front gallery, were filled with ladies; Captain Johnstone, of the navy, (commonly called Governor Johnstone) being angry, that the House was cleared of all the "~~men~~ strangers," amongst whom were some friends he had introduced, insisted, that "*all* strangers" should withdraw.—This produced a violent ferment for a long time; the ladies shewing great reluctance to comply with the orders of the House; so that, by their perseverance, business was interrupted for nearly two hours.—But, at length, they too were compelled to submit.—Since that time, ladies, many of the highest rank, have made several very powerful efforts to be again admitted.—But Mr. Cornwall, and the present Speaker, Mr. Addington, have as constantly declined

to permit them to come in. Indeed was this privilege allowed, to any one individual, however high her rank, or respectable her character and manners, the galleries must be soon opened to all women, who, from curiosity, amusement, or any other motive, wish to hear the debates.—And this to the exclusion of many young men, and of merchants and others, whose commercial interests render their attendance necessary to them, and of real use and importance to the publick.—See in a note in the third volume, under title, "Proceedings between Lords and Commons, &c." what Lord Shaftsbury says, in the year 1675, "of the scandal arising from the droves of ladies, that attended causes, depending in the House of Lords."—In Grey's Debates, Vol. III. p. 222, is the following entry: "Some ladies were in the gallery, peeping over the gentlemen's

the House for a day to consider of this order, in order to explain or repeal it ; but it is so absolutely and essentially necessary, for the carrying on any business in the House, that such an order should exist (though not always necessary that it should be strictly carried into execution) that it is always found, upon cool consideration, that it cannot admit of any alteration.—The House have, in many instances, winked at the breach of it ; and it has been often understood, that the observance of it should be remitted with respect to Peers, Members of the Irish Parliament, Officers of the House of Lords, and with other exceptions ; but this has been only on sufferance ; the order itself has notwithstanding existed, and, for the preservation of order and decency, must always necessarily exist, liable to be put in execution without delay or debate.

lemen's shoulders. The Speaker spying them, called out, "What borough do those ladies serve for?" To which Sir William Coventry replied, "They serve for the Speaker's chamber." Sir Thomas Littleton said, "Perhaps the Speaker may mistake them for gentlemen with fine sleeves,

"dressed like ladies." Says the Speaker, "I am sure I saw petticoats."—This was on the 1st of June, 1675, and shews, that, though they were at that time admitted into the House of Lords, it was not customary for ladies to attend the debates in the House of Commons.

# RULES OF PROCEEDING.

## XV. *Leave to make a Motion.*

1. **O**N the 25th of November, 1695, it is ordered, that no new motion be made after one o'clock.
2. On the 2d of January, 1701, leave given to make a motion, it being after two o'clock.—See the 26th of November, 1702; 23d of December, 1702; 14th of November, and 11th of December, 1704.
3. On the 9th of December, 1702, question put, that Mr. Mansell have leave to make a motion, it being near two o'clock; and passed in the negative.—See the 7th of March, 1711, and 23d of June, 1714.
4. On the 4th of February, 1702, leave to make a motion, it being after the time of day for that purpose.
5. On the 9th of May, 1728, leave to make a motion, it being past four o'clock.—See the 26th of February, 1728; 13th of March, 1729; 24th of April, 1731; 31st of March, 1732; 6th and 13th of April, 1732; et passim.

## OBSERVATIONS.

The principle of this rule is to prevent a motion of importance being made, after the House have proceeded on the particular business

business which has been appointed for that day, and where such motion may be a surprise on many Members who are gone away : Formerly this leave was necessary, if it was after the time fixed by the order of the 25th of November, 1695, without any consideration had of the orders of the day ; but in later times, particularly from the time Mr. Onslow became Speaker, the having proceeded upon the orders of the day was what made it necessary to have the leave of the House to introduce any new motion : If there remained any orders of the day not proceeded upon, it was not necessary to have leave to make a motion, though it should be six o'clock in the evening ; but if the orders of the day had been all read and disposed of, no motion could be made without leave, though but at two o'clock.—The practice of the House, first established by Mr. Onslow (for before \* his time it was different) and uniformly continued ever since, has been to consider two o'clock † as the hour at which the House ought to proceed upon the orders of the day ; and therefore, if any person moves for the orders of the day to be read before two o'clock, and there is a division, the Ayes go forth ; if it is after two o'clock, the Noes go forth. The having proceeded upon one, two, or three of the orders of the day, does not make it necessary to ask leave to make a new motion, if there remains one order undisposed of.

\* On the 14th of March, 1698, ordered, “ That the orders for the business appointed for the day, be read every day at twelve o'clock.”

† Within these last two or three years (this is written in 1795) it has been generally agreed by the House, that *four o'clock* shall be the hour for proceeding on the publick business of the day, which com-

monly arises out of some of the orders of the day.—I should therefore suppose, from this alteration in the hour of proceeding on publick business, that, if any Member should move for reading the orders of the day, and a division should take place, *before four o'clock*, the Speaker would direct the Ayes to go forth ; if *after four o'clock*, the Noes.



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This doctrine does not extend to motions for new writs, or on matters of privilege; the House is at all times ready to admit these, and no leave is necessary.

The instance of the 2d of April, 1728, of leave granted before the House have proceeded on the orders of the day, is a mistake.—See the 1st of April, 1728, and the practice ever since.

## RULES OF PROCEEDING.

XVI. *On a Division of the House.*

1. **O**N the 15th of June, 1604, after a division the Tellers differed in their report, and thereupon the House divided again.—But held not to be regular.

2. On the 15th of June, 1604, on a question, Whether a law shall continue to the end of the next session—it was said the Yeas must sit, because the subject is in possession; and therefore affirmed as a rule, that the Noes, who are in this case for the alteration, must go forth.

3. On the 25th of June, 1604, Bill passes on a division; and then, upon motion, such as sat against the Bill went forth of the House, and brought in the Bill in their hands; which is according to ancient order, and was now moved and done (once in a Parliament) for preserving memory of the order.

4. On the 26th of May, 1606, after a division, it came in question, Whether the Tellers certifying, and yet disagreeing, any man may after speak to the number, or examine it.

5. On the 28th of May, 1624 \*, on a division, seven Members had retired to a Committee-room, and refused to give their voice; they were sent for, and their names taken—and (as it should seem) obliged to divide.

\* There are two Journals preserved of the proceedings of this session.—This instance is in page 714 of the first volume of the printed Journals.

6. On the 24th of April, 1626, some Members desiring that they might go into the Committee chamber, as having given no voice—resolved by the House they might not, but that all present at the \* debate “should vote.”

7. On the 10th of December, 1640, it was declared for a constant rule, That those that give their votes for the preservation of the orders of the House, should stay in; and those that give their votes otherwise, to the introducing of any new matter, or any alteration, should go out †.

8. On the 18th of May, 1663, Sir Anthony Irby being absent in the Speaker's chamber, when the first affirmative and negative was put, Mr. Speaker declared, that by the orders of the House, though he were present at the ‡ second putting of the question, he ought not to have any vote; and his voice was disallowed, after the division, and report of the numbers §.

9. On the 4th of February, 1664, a Member appearing to be concerned in interest, his voice was disallowed, though after a division.

\* This would have been more properly expressed, if it had been, “all present at putting the question.”

† A debate arose in the House of Lords on the 25th of November, 1691, Whether, “upon a division, the contents, or non-contents shall go out for the future.” And the question being put “Whether for the future, upon divisions in the House, the contents shall go out?” It was resolved in the affirmative.

‡ It is very common, where the Speaker is doubtful about the majority of voices, for him to put the question a second time, before he gives his opinion.—The doors ought to have been shut, before the first putting of the

question; in which case, Sir Anthony Irby could not have come in.

§ The same circumstance happened on the 20th of February, 1795; Mr. Fox was told in on a division, and the tellers reported the numbers to the Chair, 64 to 12; but notice being taken, that Mr. Fox was not in the House when the question was put, Mr. Speaker asked Mr. Fox, Whether he was in the House, and heard the question put? Mr. Fox answered, That he was in the Speaker's chamber; upon which the Speaker said, Then his vote must be disallowed; and the Speaker immediately reported the numbers 64 to 11.

10. On the 25th of April, 1668, a Committee is appointed to search into precedents, in what cases the Yeas and Noes are to go forth: But I do not find they make any report.

### DIVISION ON PROCEEDING ON PETITIONS.

1. On the 20th of February, 1701, That a petition be brought up; Ayes go forth. So on the 10th of December, 1702; 9th of February, 1711; 13th of February, 1717; 8th of February, 1722; 22d of April, 1730; 4th of March, 1746; 14th of April, 1756.

2. On the 14th of March, 1703. That a petition be read; Ayes go forth\*.

3. On the 27th of January, 1729, That a petition do lie on the Table; Noes go forth. So on the 18th of February, 1729, and the 2d of March, 1735.—The instance of the 31st of January, 1767, is a mistake.—The Noes ought to have gone forth.

4. On the 10th of November, 1721, That a petition complaining of an undue election and return, be referred to the Committee

\* On the 25th of June, 1689, That a petition be now read—Noes go forth.—This was a petition from the Common Hall of London, which, having been presented by the Sheriffs at the Bar, had not, as to its contents, been opened to the House. See the debate on this petition in Grey's Debates, Vol. IX. p. 363. There was a doubt who should go forth.—The speaker, Mr. Powle, says "I am satisfied in my judgment, that the Noes ought to go out."—I should suppose, the Speaker decided right; because, till the petition had been read, no order could properly be made respecting it; not

even for its being on the Table.—But there was great irregularity in the proceeding on this petition; because, it being a petition from "The Common Hall," and not "from the Corporation of London in Common Council assembled," it ought not to have been presented by the Sheriffs, but offered by a Member in his place.—See in the third volume of this Work, under title, "Petitions on matters of Supply," what is said, relating to petitions from "The Corporation" or from "The Common Hall" of the City of London.

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of Privilege and Elections, Noes go forth—because after the appointment of this Committee, this was the regular mode of proceeding upon such a petition.

5. On the 27th of January, 1729, That a petition be rejected; Noes go forth; because a negative had been put on its lying on the Table: But on the 18th of February, and the 26th of February, 1729, Ayes go forth.

### DIVISION ON PROCEEDING ON BILLS.

1. That a Bill be brought in, or read first or read second time, or for proceeding in any stage of a Bill; Ayes go forth.—See the 4th of April, 1733, *et passim*.

2. That a Bill be committed; Ayes go forth.—That a Bill be committed to a select Committee; Ayes go forth.—See the 13th of February, 1752; But the 23d of April, 1735, is a mistake; See the 22d of April, 1735.

3. That a Bill be committed to a Committee of the whole House; Noes go forth; 12th of December, 1707.

4. That the report of a Bill do lie on the Table, Noes go forth, on the 30th of April, 1742: But on the 11th of May, 1749, in a similar question, Ayes go forth; because there was an order of the day for receiving it.

5. That a report be now read; Ayes go forth; on the 21st of May, 1751, and 17th of March, 1752.—But where there is an order of the day for receiving the report, there, on a question, that the report be now read, Noes go forth.—See the 13th of July, 1713; the 1st of May, 1730; and the 25th of June, 1746:

6. That amendments be read a second time; Noes go forth.— See the 24th of February, 1707; 6th of May, 1742; 5th of April, 1757.

7. That a clause offered on the report of a Bill be read a second time; Ayes go forth; 13th of May, 1738; 17th of March, 1739.—See the 22d of April, 1748.—On the 3d of May, 1727; 18th of April, 1739; and the 19th of March, 1755, on a question, that words, proposed to be left out upon the third reading of a Bill, stand part of the Bill; Noes go forth; so on the 29th of March, 1762; and the 24th of November, 1775; and the 19th of May, 1780; and the 12th of June, 1783.

#### DIVISION RELATING TO COMMITTEES.

1. On the 21st of February, 1676, on a dispute who should take the Chair of a Committee, and question, that Sir Richard Temple do take the Chair; Noes go forth.—See the 13th of March, 1701; 24th of November, 1708; 6th of March, 1728; et passim.—The instance of the 19th of February, 1752, is a mistake.

2. That a Committee to which a matter had been referred, be a Committee of the whole House; Noes go forth; 19th of February, 1728.—See the 21st of February, 1728; 16th of April, 1744; 22d of January, 1746; et passim.

#### DIVISION ON AMENDING REPORTS FROM COMMITTEES.

1. On a question for agreeing with the whole, or any part of a report from a Committee; Noes go forth; 5th of April, 1711; 17th

17th of May, 1733. The instance of the 13th of April, 1727, is a mistake.—See the 16th of April, 1728; 24th of April, and 8th of May, 1729; 18th of May, 1739; 20th of April, and 9th of May, 1749. On the 13th of March, 1740, a clause reported from a Committee is amended by the House; and then, on question to agree with the Committee in the clause, “so amended” Ayes go forth.—So the Ayes go forth in a similar proceeding on the 18th of November, 1745. But on the 10th of December, 1762; the 14th of May, 1765; and the 28th of April, 1779, on question to agree with a Committee on an address, and clause, reported from the Committee, but amended by the House\*; Noes go forth.

### DIVISION ON QUESTIONS RELATING TO THE SPEAKER AND MEMBERS.

1. That the Speaker do now leave the Chair; the Noes go forth, because it is always in consequence of an order for the House to resolve itself into a Committee.—See the 19th of April, 1749, et passim. The instances of the 22d of March, 1733; 3d of March, 1742; and the 20th of November, 1746, where it is said the Yeas go forth, are mistakes.

2. That the Speaker do issue his warrant for a new writ; Noes go forth: 17th of March, 1713; 21st of April, 1714; 8th of February, 1755; 8th of May, 1776.—But on the 10th of November, 1768; and the 7th of November, 1775; Ayes go forth†.

\* See in the observations on this head, what is said on this difference in the practice of the House.

† The reason of this was, that fourteen days, the time limited for receiving peti-

tions, not being expired, a motion to issue the writ was irregular; and therefore those, who were for proceeding against the established forms of the House, were to go forth.

3. That

3. That no Member do absent himself from the service of the House, without the leave of the House ; Noes go forth ; 25th of April, 1765.

4. That a Member be one of the Members of any Committee, that is appointed ; Noes go forth.—See the instances of Sir Christopher Musgrave, 26th of November, 1680 ; and of Sir Joseph Jekyll, 13th of April, 1715 ; and of Mr. Francis, 3d of April, 1787, and 5th and 11th of December, 1787.

5. That a Member, on the call of the House, be excused ; Ayes go forth ; but on the question, That a Member be taken into custody ; \* Noes goes forth ; 23d of January, 1717 ; and the 15th of February, 1781.

#### DIVISION ON QUESTIONS MOVED, AND AMENDMENTS PROPOSED.

1. When the previous question is moved, and the question put, “ that that question be now put ; ” Noes always go forth—passim.

2. But “ that words stand part of a question,” when moved to be left out ; Ayes go forth ; 1st of February, 1703 ; 7th of December, 18th of January, and 5th of February, 1708.—The instance 2d of December, 1708, is a mistake.

3. When an amendment is moved to insert words, and an amendment proposed to that amendment, by leaving out part of the

\* Because there had been previously an order made, “ That such Members as shall, not attend, when the House is called, be taken into custody.”



words, on a question, “ that these words stand part of the amendment;” the Ayes go forth; 24th of March, 1709; 21st of January, 1728.—See the 13th of November, 1755.

4. When a question is moved by the Chairman of a Committee, in pursuance of a resolution, and by direction of that Committee, and an amendment is proposed, to leave out words, and question is put, “ that those words stand part of that question;” Ayes go forth; 16th of March, 1730.—But Quære.

### DIVISION ON QUESTIONS RELATING TO THE LORDS.

1. Resolution from the Lords communicated, and concurrence desired, and amendment proposed, to leave out words; on question, “ that those words stand part of the resolution,” Ayes go forth; 8th of December, 1705.

2. Where the Lords amend a Bill; on question “ that the amendments be read a second time,” Noes go forth; 24th of April, 1707, and 2d of May, 1745.

3. That the Messengers from the Lords be called in; Ayes go forth; 1st of July, 1717.

### DIVISION ON QUESTIONS OF ADJOURNMENT.

1. That the House do adjourn till to-morrow; Noes go forth; 21st of December, 1705.

2. Question

2. Question for the House to adjourn, put in the midst of a proceeding; Noes go forth; 22d of January, 1705; 9th of February, 1707; 21st of December, and 20th of January, 1708; 8th of March, 1731; and 5th of February, 1755.—But on the same question to adjourn, and in the midst of a proceeding, Ayes go forth; on the 3d of February, 1729; 17th of November, 1742; 19th of December, 1744; 23d of January, 1745.—Note the difference.

3. On the 29th of January, 1708, on question to adjourn over the 30th of January, Noes go forth.

4. On the 29th of February, 1727, question to adjourn from Thursday to Monday; Noes go forth.—This is a mistake.

#### DIVISION ON PROCEEDING ON THE ORDERS OF THE DAY.

1. That the orders of the day be now read; Noes go forth; 2d of March, 1708; 1st of February, 1743; 1st of April, 1747.—But on the same question, Ayes go forth, on the 21st of April, 1736. Note the difference.

#### OBSERVATIONS.

Before the House proceed to a division, either in the House or a Committee of the whole House, indeed, before the question is put, upon which it is probable there may be a division, the Speaker

or Chairman should take care that all strangers are withdrawn \*: If this is not done, it is almost impossible but that there must be great irregularity and confusion; for while strangers are going out, Members will come in; and they will be told in the division, though not present at putting the question; and this can only be prevented by obliging strangers to withdraw, and shutting the doors, before the question is put †.

As no Member ought to be told in a division, who was not in the House when the question is put, so all Members who were in the House, must be told on one side or the other, and cannot be suffered to withdraw. It often happens, that Members, not wishing to vote upon particular questions, withdraw into Solomon's porch, or ‡ the Speaker's room; but these being still con-

sidered

\* After the Speaker has put a question, and declared who have it, the Ayes or the Noes, any Member is at liberty to contradict him, until some Member comes into the House, but after a Member is come in it is too late. *Mr. O.*

† On the 30th of May, 1785, the House divided upon the question, "Whether the report from the Committee appointed to consider of the trade with Ireland, should be now taken into consideration." During the division, and whilst the strangers were withdrawing from the gallery, several Members came in from the rooms above stairs.—This irregularity being taken notice of by the Tellers, and complaint made of it to the Speaker, the Speaker, though the division was actually made, and the Members who went out, were withdrawn into the Lobby, ordered them all to come back into the House, and then stated, what he apprehended to be the rule of the House, viz. That such Members as were not present in the House, and did not hear the question put,

had no right to vote.—The Speaker permitted a conversation to take place upon this subject, the Members who spoke sitting with their hats on; and after some time, the Speaker having again declared the rule, and the House generally assenting to what he had laid down to be the order, all the Members, who were under the predicament described, withdrew, and the division went on, without telling those Members who had come down from above stairs. This confusion and interruption arose, from putting the question before the strangers were withdrawn.—The same circumstance had happened, three or four days before, in a Committee of the whole House, and the Members were there also obliged to withdraw.—See before the cases of Sir Anthony Irby and Mr. Fox, p. 178.

‡ On, the third reading of the Bill for taxing Roman Catholics, on the 17th of May, 1785, it was taken notice of on the division, by some of the Members (after the door was shut) that there were other Members behind the Chair (in Solomon's porch);

the

sidered as part of the House, (as there is no avenue to them but through the House) if any Members insist upon it, those Members must return into the body of the House, and must be told \*. If they were not in the House or gallery when the question was put, but were absent in Solomon's porch, or the room, and consequently did not hear the question put, they have a right to demand of the Speaker, "what is the question?" and to stay in or go out, even though the door should be then shut; and this I remember to have happened to Mr. Pitt, when Secretary of State; and frequently to other persons. But if they were in the body of the House, or in the gallery, when the question was put, and have from inattention, or any other circumstance, neglected to go forth till after the door is shut †, it is not then in their option, as in the other case, 'where' they will be told; they must be told 'in' the House, though by this they are made to vote entirely

the Tellers were called upon by the Members to fetch them out, Mr. Freeman, one of the Tellers, told the Speaker, that there were four Gentlemen in the Speaker's little chamber, but that they did not intend to vote in the question, and hoped they should be excused from coming into the House.—The Members, dissatisfied with this answer, required that they should come into the House; which they accordingly did. Sir John Norris, Mr. Egerton, Mr. D'Arcy, and another. Sir John Norris and Mr. Egerton said, if they did vote, they desired they might vote with those who were gone out.—Mr. Egerton said, that he was in the Speaker's little chamber when the question was put. The Speaker declared, that no Member could regularly withdraw, who was in the House when the question was put; that the passages and places about the House, which lay open to the House, were esteemed as part of the House; that he looked upon the shutting of the door to make the divi-

sion; but that he had known the like happen before, in the case of Mr. Ash, and that he had leave to vote with those who went out.—But some Members insisting, that, according to order, they ought to be told with those within, the Speaker said, 'that instances made order'—and, with a voice somewhat peremptory, commanded the Serjeant to open the door. Sir J. Norris and Mr. Egerton went out, but D'Arcy and the other staid in. I then staid in the House, and well remember this whole matter; it has been done twice in the same manner since I was Speaker, and I take it now to be the rule. Mr. O.

\* See the 22d of June, 1643.

† It is part of the duty of the Tellers, to direct the shutting of the doors; that no unfair advantage may be taken, or blame laid upon the Serjeant, for having shut them too soon, or kept them open, longer than is necessary.

contrary to their known and avowed inclination.—What is commonly, in the proceedings of the House of Commons, called the Speaker's 'chamber,' is the room behind the clock, and is not in the House: the Speaker's "room," or what Mr. Freeman calls "the Speaker's little chamber," of which I speak here, is that to which he retires from Solomon's porch, and is in the House.

On Monday the 21<sup>st</sup> of February, 1780, Mr. Baldwyn, Member for Shropshire, had, during the division, staid in the passage from the gallery into the House, behind the clock; and had not, during the telling of the Members in the House, appeared either in the body of the House or in the gallery; but being discovered before the doors were opened, he was brought up by the Tellers to the Table, and the Speaker was, I think very properly, of opinion, that he must be told 'in' the House, and that he had no choice of going out or staying in, as is given to those who are in the Speaker's room when the question is put; and who may be supposed to be ignorant that a division is going forward, and who are therefore at liberty to have the question stated to them, and to make their election how they will vote; but to entitle themselves to this favour, they ought to assure the House they did not hear the question put. In Mr. Baldwyn's case, he could make no such pretence, but was exactly in the case of a Member, who, proposing to go forth, had from inattention waited till the doors were shut (as once happened to \* Lord George Cavendish) and who is then obliged to be told 'in' the House, and has no option given him. Endeavours were used to persuade the Speaker,

\* A similar circumstance happened on the division on the 24<sup>th</sup> of January, 1794, to Mr. Filmer Honeywood, and Mr. Walwyn of Hereford. The doors had been shut, by the Tellers, before they had withdrawn. On their being called to the Table, they stated,

they were actually going forth; but that the doors were shut, before, from the crowd, they could get out. The Speaker, I think, inadvertently, directed the doors to be opened, and they were told so again.

that Mr. Baldwyn ought to have the same liberty as if he had been in the Speaker's room; but the Speaker decided peremptorily against him, and said, "that Mr. Baldwyn being in the House, after the doors were shut, and after those within the House had been told, he could not claim the excuse, which is admitted for those who are in the Speaker's room; who, though they are 'supposed to be in' the House, are literally 'out' of it, and out of the hearing of the question being put, or knowing that a division is going forward." Mr. Baldwyn was therefore compelled to be told 'in' the House\*.

Whilst the Tellers are telling, Members should be silent, that they may not be interrupted; for if any one of the Tellers thinks there is a mistake, or if they are not all agreed, they must begin and tell again. No Member must remove from his place, when they have begun telling; nor can any Member be told but sitting in a seat, and not on † the steps of any of the passages. When they have told the Members in the House, and are all agreed, they should deliver in the number at the Table, to the Clerk, that there may be afterwards no dispute. If any difficulty arises, in point of order, during the division, the Speaker must take upon himself to decide it, 'peremptorily;' for, as it cannot be decided by the House, and so have a division upon a division, there is no other mode but to submit implicitly to his determination; subject however to the future censure of the House, if that determination

\* The same circumstance happened in the case of Mr. Hunt, upon a division, on the 3d of March, 1788, relating to the production of evidence on an East India Bill then depending. Mr. Hunt was in the passage, which comes from the gallery, behind the clock, into the House, whilst the question was put—He was called to the Table by the Speaker, and being asked by him "Whether

he was within the House, or in the Speaker's chamber," he answered, "Within the doors of the House." Upon which, the Speaker, very properly, directed that he should be told in the House.

† See what are *seats* and what are *steps*, in a note under title, "Speaker—his duty in "keeping order in the House," in this volume.

is irregular or partial. But in order to form that determination, though there can regularly be no debate, it has frequently happened that old and experienced Members have, by the permission of the Speaker, assisted him with their advice, sitting on their seats, and speaking with their hats on, to avoid even the appearance of a debate; but even this cannot be done but by the Speaker's leave; for, if it could, the division might last several hours: the determination of the Speaker, therefore, under these circumstances, is absolute; and the Members present ought to submit quietly to his directions\*.—It has sometimes happened†, that a division has been demanded, and it has been found, that there is but one

Member

\* Upon the 27th of February, 1770, upon a division relating to the Pembroke Election, after the doors were shut, three Members appeared upon the steps coming out of the gallery, and immediately retired again; but being brought down by the Tellers, the Speaker asked them separately, Whether they were *in the House* when the question was put? and on their answering in the negative, he directed them to withdraw, without being told.—Some debate beginning amongst those who staid in the House, touching the regularity of this proceeding, the Speaker, very properly, immediately put an end to it, saying, he would not suffer any debates whilst half the Members were out of the House, but would take upon himself to justify to the House at large the propriety of the directions he had given. So on Monday, the 8th of December, 1783, upon the division on the question for the third reading of the Bill, appointing Commissioners for the East India Company, whilst the Members were going out, Alderman Townsend called over to those in the lobby, that he had been locked out by the Serjeant, though he had a right to vote. The Tellers coming up to the Table, and informing the

Speaker of this, he directed the Serjeant to let Mr. Townsend in, and that he should also come up to the Table.—When he came, the Speaker asked him, “Whether he was present *in the House* when the question was put?” He said, “He was, and gave his negative voice to it.” Upon which the Speaker told him, he was then at liberty to divide as he thought proper.—This difficulty arose from the strangers not being withdrawn, and the doors locked, before the question was put. Had this been so, the Alderman could not have got out.

† These things happen from a very unparliamentary proceeding, in dividing the House for the sake of a division only; whereas the old rule, and practice too, were, that the House should be divided only when the Speaker's determination upon the voice was wrong, or doubtful; and thought to be so by the Member calling for the division, as the words then used imply.—For when the Speaker has declared for the Yeas or Noes, upon the cry, the Member, who would have the division, says, “The contrary voice has the question.” Mr. O.

This abuse, and ‘unparliamentary proceeding,’ as Mr. Onslow very properly terms

Member on one side of the question, and consequently not enough to appoint two Tellers\*; as on the 9th of July, 1746; the 12th of December, 1751; and the 12th of May, 1772†; in this case the division cannot go on, but the Speaker declares on the other side. If there are two Tellers, the division must go on, and be reported, though on one side the return of the numbers should be none, as on the 10th of June, 1758; the 13th of May, 1774‡; and 6th of December, 1787.

If any difficulty arises upon telling in the Members §, or the Tellers should disagree upon their numbers, it does not appear how this can be decided but by another division ||; as was done on the  
27th

terms it, has in my memory been carried to such a length, as to make many Members wish for an alteration; and that the right of calling for a division should not be in one Member only, but be vested in two, three, or more Members, standing up in their places, and declaring for the contrary voice to what the Speaker had declared. This might at least secure the House from that inconvenience and unnecessary delay in their proceedings, which has been sometimes wantonly brought upon them, by the power of creating a division being vested in one Member only—and could not, as far as I see, be attended with any ill consequences. At the same time, perhaps, it is better that so ancient a practice should not be discontinued or altered, unless the House should be compelled to take any such steps for the preservation of their order, and the regularity of their proceedings.

\* This is not very creditable to the mover of the question: “An vero hoc pro nihilo putas, efferri hæc foras, et ad Populi Romani aures pervenire, ei, qui primus sententiam dixerit, neminem assensum?”—Cicero Philippa. 10. cap. 3.

† See the 15th and 25th of May, 1778; and the 11th of February, and 2d of March, 1780; for the proceeding where there is but one Teller.

‡ On this division, the Attorney General Thurlow, and Mr. Charles Fox, were Tellers for the Noes, who were none.

§ See in the Lords Journals of the 11th of January, 1689, a very extraordinary proceeding, where, upon a division, the Speaker reports from the Tellers, that the Contents were 17, and the Non-contents 18. After which declaration, one of the Tellers acquainted the House, “that he had mistaken” in his report to the Speaker, for that the Contents were 18, and the Non-contents “17.”—Upon debate whereof, it was resolved, “That, after a mistake in a report, the mistake may be rectified after the report made.”—And it was ordered, that the mistake be rectified by the Clerk.

|| See in Grey's Debates, Vol. III. p. 128, a very curious account of a difference, which arose in a Committee of the whole House, between the Tellers, on the 10th of May, 1675; when, after great confusion and proceeding almost to drawing their swords, the Speaker,



27th of February, 1771, where a stranger was told in as a Member: But in order to avoid what happened upon that occasion, when some Members went away, who were in the first division, the Serjeant and Door-keepers should, upon every division, not open the doors of the lobby or gallery till the numbers are reported by the Tellers at the Table, and declared by the Speaker for or against the question: for till then the division is not over. In short, it is the duty of the Serjeant, and the persons under him, to keep every avenue into the House, and the doors of the Lobby, shut, from before the putting of the question, till the final declaration, by the Speaker, of the determination of the House. When the House has been told, and the Tellers are agreed upon the numbers, the usual manner of reporting the numbers to the House is, for those Tellers who have told on the part of the majority, to take the right hand in coming up to the Table, and they all make three obeysances to the Chair, as they come from the Bar—But if the numbers are equal, the Tellers are mixed alternately\*.

The general rule, of which side ought to go forth upon a division†, is very well expressed in the Journal of the 10th of December,

Speaker, Mr. Edward Seymour, “very opportunely and prudently, rising from his seat near the Bar, in a resolute and slow pace, made his three respects through the crowd, and took the Chair. The Mace, after some opposition, being forcibly laid upon the Table, all the disorder ceased: The Speaker, being sat, said, “That to bring the House into order again, he had taken the Chair, though not according to order.” Some Members excepted to this; but the doing it was generally approved, as the only expedient to suppress the disorder.”—Andrew Marvell says, in one of

his letters, writing on the subject, “The Speaker had the honour to maintain the dignity of the Chair, after that of the House was gone; and obliged every man to stand up in his place, and engage his honour not to resent any thing of that day’s proceeding.”

• See the note upon this subject, under title, “Speaker,—his duty in other particulars.”

† It is also explained with great accuracy, in Serjeant Glanville’s report of the election for the county of Norfolk.—“When the question is, upon the passage of a Bill, there

ember, 1640 ; but is subject to a great variety of exceptions, as appears from the instances before cited. The reason for these exceptions I will endeavour to explain, as well as I can, under the several heads into which those instances are classed.

## P E T I T I O N S.

“ That a petition be brought up ;” is a question introductory of new matter, as well as the immediate proceeding upon that petition \*, and therefore, according to the rule, the Ayes go forth : But as the regular course of proceeding, in the House, requires that a petition should lie upon the Table, for the consideration of Members, before any thing is done upon it, when this question is moved, “ That it do lie on the Table,” those that are against preserving this course must go forth. If a negative is put upon its lying on the Table, and the House refuse to consider it at all, nothing remains but to reject it ; and therefore, though if the question for rejecting a petition is moved in the first instance, the Ayes go forth, because it ought to lie on the Table ; yet after refusing to consider it, on a question put for rejecting it, the Noes go forth.—When it has been read, every question for referring it to a Committee, or farther proceeding upon it, is introductory of new matter, and the Ayes go forth.

“ there it is true that the affirmative voices  
“ must go out, for that they are for an in-  
“ novation, and to bring in a new law ; so  
“ as the rule is not constant, that the affirma-  
“ tive voices must go forth, when the House  
“ is divided. But thus—That those, that  
“ are for innovation or alteration of that,  
“ which by presumption is well enough, un-  
“ til it be actually resolved to the contrary,  
“ ought to undergo the trouble and disad-

“ vantage, if it be any, of going forth, when  
“ the House is divided upon such a ques-  
“ tion.”—*Stanhope's Cases of Election*,  
p. 5. This report was made to the House  
on the 24th of March, 1673.

\* See the exception, mentioned before in  
p. 179, in the case of a petition from the  
Common-Hall, London ; where on a question,  
“ That the petition be now read,” the Noes  
went forth, 25th of June, 1689.

## B I L L S.

“That a Bill be brought in,” or, read the first or second time, or committed, or reported, or ingrossed, or read the third time, are all questions introductory of new matter, and the Ayes go forth — But when a Bill is ordered to be committed, and the question only lies between a Select Committee, or a Committee of the whole House, the House pay that respect to the latter, and give it so much the preference, that those who are for the select Committee, and against the Committee of the House, in both instances, go forth.—When a Bill is reported, and the report brought up to the Table, the course of proceeding requires it should lie there for the consideration of Members, before any thing further is done upon it; and therefore those who are against this proceeding go forth, as well as those who are for reading it immediately. But when the House have determined it shall be immediately proceeded upon, and the report has been read once, nothing can be done regularly but to read it a second time; and therefore those who are for putting off the further consideration of the report, and against reading the amendments a second time, must go forth \*

## C O M M I T T E E S.

When a question is put upon any Member's taking the Chair of a Committee—as every Member is supposed to be proper, and equal to the duty imposed upon him—those, who are against any Member, must go forth †. And when there is a difference, whether.

\* It is the same, when an address is reported from a Committee, and has been read once. Upon a question, “that this Address be read a second time,” Noes go forth; 2<sup>d</sup> of November, 1777.

† This question must always be decided, not by the Committee, but by the House—so that, when the Speaker leaves the Chair, if any difference arises, who shall take the Chair in the Committee, the Speaker must resume.

ther a Committee, to which a Bill or other matter is referred, be a select Committee, or a Committee of the whole House, the latter has always the preference; and therefore those go forth, who are against the Committee of the House.

## REPORTS FROM COMMITTEES.

The House pay that attention and regard<sup>to</sup> every thing that has been done, whether by a select Committee or a Committee of the whole House, that, wherever a question is put for agreeing with a Committee, either in the whole or part of a resolution, or in an amendment to a Bill, those who are for disagreeing with the Committee, or making any alteration in what the Committee have done, go forth: But it should seem, from the instances in 1740 and 1745, that, if the House makes any alteration in the report, as it came from the Committee, this changes the rule, and the Ayes go forth.—And yet, the instances of 1762, 1765, and 1779, where a different practice was adopted, render this doubtful\*.

resume the Chair; and then a motion being made, that a particular Member do take the Chair of the Committee: that question is determined by the House.—See in Grey's Debates, Vol. III. p. 301, what passed upon Sir Thomas Jones and Sir Charles Harbord, being both proposed, as Chairmen of a Committee of the whole House.

\* I own, I am inclined to think the former proceeding, if it had been uniformly followed, to be right; and that, where the House, by alterations and amendments, has changed the form of the report from what it was, when it came from the Committee, the rule of the Noes going forth, (which arises from the respect that the House pay to any act of a Com-

mittee) no longer subsists; because, by those alterations and amendments, the House may have introduced matter, which the Committee certainly had not, perhaps would not have, approved of. The instances of 1740 and 1745, were in the best times of Mr. Onslow's Speakership—Yet in that of May, 1765, Mr. Dyson was one of the Tellers. In a division, which took place on the 15th of June, 1795, to agree with a clause, reported from the Committee on the Bill relating to the establishment of the Prince of Wales, and amended by the House, the Noes were directed to go forth.—So perhaps it may be better, that this should now continue to be the rule.

# 196 RULES OF PROCEEDING.

## SPEAKER AND MEMBERS.

The question "for the Speaker to leave the Chair," must be preceded by a resolution of the House to resolve itself into a Committee upon that day; and therefore, when the order has been read for going into the Committee, those who are against proceeding in consequence of that order must go forth.—As the House of Commons ought, if possible, to have always its number of Members complete, those who, upon a vacancy, are against the issuing of a warrant for a new writ for the election of a Member, must go forth\*. For a like reason, as it is the duty of every Member to attend the House, those ought to go forth, who are against enforcing that attendance by a special order.—So every Member being supposed to be proper to be appointed upon a Committee, those who object to any such appointment must go forth.

## QUESTIONS MOVED AND AMENDED.

When a motion has been made, and a question proposed to the House, those, who are against putting that question, are for al-

\* But see the Note †, page 182.—In Glanville's Reports of Cases of Election, p. 4, it is said "On a report from the Committee of Elections, the question being, That as many as were of opinion that the said Members so returned were duly elected should say, Aye—And again, that as many as were of another mind, should say, No—It could not be discerned by the sound, which side had the more voices; so the House was to be divided, and the polls on both sides numbered, as the manner is in the like cases.—And then a new question arose, Whether the Affirmative or Negative voices ought to go forth? For that

"it was insisted upon by some, that, by the orders of the House, the Affirmative voice ought always to go forth upon every division of the House.—But upon debate it was resolved, that the Negative voices ought to go forth in this case; for that the said Members being returned of record, the House is possessed of them as lawful Members, until by judgment they be removed; and the voices of such as would have them removed, do tend to an innovation, although their voices and opinions be pronounced by the negative word."—See this case in the Journal, 24th of March, 1623.

tering the usual course of proceeding, and must go forth; the House being, as is commonly said, in possession of the question. One should naturally suppose, that this reasoning would extend to every part of the question, and that the House is as much in possession of 'every word' of the question, as of 'all the words' put together; and that therefore "on a motion to leave out some  
" of the words, and question put, that these words stand part of  
" the question;" I say, one should imagine that the Noes ought, upon the same principle, to go forth; but the uniform practice has been otherwise, and in all instances, upon the question, "that  
" words stand part of a question," the Ayes have gone forth. I own, I never understood the reason of this distinction; but in a matter, not very important, a regular and uniform practice of fourscore years is of itself a sufficient reason for adhering to that practice. The same argument must be urged in favour of the other instances, "where an amendment is proposed to be made to  
" a question, by inserting words, or by leaving out words, and an  
" amendment is proposed to be made to that amendment, by  
" leaving out part of the words; here, on the question, that these  
" words stand part of this amendment," the Ayes, in both instances, have gone forth. If it was allowable to argue upon "what ought to be" the practice, and I was not concluded by what I have just said, I should have thought that, in the case of the 13th of November, 1755, the Noes ought to have gone forth, because they were for the words standing part of the original question; and would therefore, if the question had been put in this form, and not complicated with the other part of the amendment, have then, agreeable to the practice, gone forth.—I should also, if it had been a new case, have thought that, in the instance of the 16th of March, 1730, the Noes should have gone forth; because I should have considered a question moved by the Chairman of the Committee, in pursuance of their resolution and direction,

tion, in the same light with a motion to agree with a Committee in a resolution; and therefore subject to what has been said under the title "Reports," page 195.

But in these instances, and every other of this sort, it is more material that there should be a rule to go by, than what that rule is; in order that there may be an uniformity of proceeding in the business of the House, not subject to the momentary caprice of the Speaker, or to the captious disputes of any of the Members. If the maxim, "*Stare super vias antiquas*" has ever any weight, it is in those matters, where it is not so material, that the rule should be established on the foundation of sound reason and argument, as it is, that order, decency, and regularity, should be preserved in a large, a numerous, and consequently oftentimes a tumultuous assembly\*

## L O R D S.

The Lords having come to a resolution, or having made amendments to a Bill, does not, in the opinion of the Commons, give that weight to either of these questions, but that on a question to agree with them in the whole, or any part, the Ayes go forth. When the Lords amend a Bill, and the House, by reading the Amendments once, have proceeded to take them into consideration,

\* In a free conference held between the Lords and Commons upon the subject of a demand made by the Commons, for a convenient place to be allowed, *as usual*, for their Managers upon an Impeachment—The Lords refuse it, and say, "*The reasonableness* of what is desired by the Commons has never been considered by the Lords; for they were bound up to consider nothing but what was *usual*.—Matters of form are essential to Government, and it is of con-

sequence to be in the right.—All the reason for forms is custom, and the law of forms is practice; and reason is quite out of doors.—Some particular customs may be grounded upon reason, and no good account can be given of them.—Yet many nations are zealous for them; and Englishmen are as zealous as any others, to pursue their old forms and methods." See Commons Journal of 2d of July, 1698.

nothing

nothing can regularly be done with the amendments but to read them a second time; and therefore upon this question the Noes go forth.—Though the House of Commons ought to be at all times ready to receive messages from the Lords, yet those messages, being introductory of new matter, fall within the general rule, and the Ayes go forth on question for admitting the Lords messengers.

### A D J O U R N M E N T.

The common and regular proceeding, in questions of adjournment, is to adjourn to the next sitting-day; so that upon this question, those who are against this, and for adjourning to a future day, must go forth; as well as those who are for sitting upon a \* Sunday, or any other day, not a sitting-day. Though it is now become a practice † for the House to adjourn over Saturday, yet, (there being no reason why the House should not sit on a Saturday,) upon a question, “to adjourn from Friday to Monday,” the Ayes should go forth.

When a motion is made “to adjourn,” simply, without specifying any day, if this question is put before four o’clock, the Ayes go forth, because four o’clock is, for the reasons given under the title “When the Speaker may take the Chair,” the regular hour at which the House may adjourn; but if it is after four o’clock, the Noes go forth, even though this question should be moved in the midst of other business: And this accounts for the difference of the

\* See what is said upon the subject of sitting on Sunday, in the note \*, p. 107, in this volume.

† This practice of adjourning from Friday to Monday (unless any extraordinary business makes it expedient to sit on Saturday)

seems to have begun about the year 1732; it is commonly said, to have arisen from a desire of accommodating Sir Robert Walpole, who was then Minister, and used to go down on Saturday to hunt in Richmond Park.



Ayes and Noes going forth upon the same question. If the question is not simply "to adjourn," but "to adjourn over the next sitting-day," this distinction does not apply; in all these instances the Ayes go forth.

## ORDERS OF THE DAY.

It appears, from what has been said before, that two o'clock is the hour now established \*, by the practice of the last fifty years, for reading the orders of the day; if this question is therefore moved before two o'clock, the Ayes must go forth, as deviating from the usual practice of the House: if it is moved after two o'clock, though in the midst of other business, the Noes go forth, upon the same principle.

There is one observation to be made under this title, which affects the rule of the Ayes or Noes going forth, upon every question that may occur under any of the other titles; which is, that, where there is an order of the day for any thing to be done, when that order is read, if there is a division, those who are against carrying that order into execution must go forth; that is, in all instances, the Noes; and this, in those cases where, if there had been no order of the day, the Ayes would have gone forth.—See the 11th of April, 1771, and in many other instances.

\* But see what is said before in the note † p. 175. Whether, from the change of the hour, at which publick business now begins, the Speaker would not be justified in alter-

ing the rule, of who shall go forth on a division for reading the orders of the day, from two o'clock to four?

## S P E A K E R.

- I. *How chosen and approved.*
- II. *His Duty in praying the Privileges of the Commons.*
- III. *His Duty in keeping Order in the House.*
- IV. *His Duty in other Particulars.*
- V. *His Rank.*

I. *How chosen and approved.*

I. **I**N the first Parliament of Richard II. 1377, Sir Peter de la Mare, Knight of the Shire for Herefordshire, is chosen Speaker, and is said, in the Parliamentary History, Vol. I. p. 339. 349, to be the first Speaker upon record \*.

2. In 1399, the first of Henry IV. Sir John Cheney being elected Speaker, and approved by the King on the 7th of October, came again the next day before the King, and declared, that by a sudden disease he was unable to serve, and that therefore the Commons had chosen Sir John Doreward in his room, whom the King accepted.—Rot. Parl. Vol. III. p. 424.

\* But see the 51st of Edward III. 1376, Rot. Parl. Vol. II. p. 374, where Sir Thomas Hungerford, on the last day of the Parliament, is mentioned as being Speaker of the House of Commons: The words of the Roll are, " Qi avoit les Paroles par les communes d'Engleterre en cest Parlement."

—See prefixed to the Abridgment of Sir Robert Cotton's Records, published by Prynne, a chronological table, of all the Speakers of the House of Commons, from Sir Thomas Hungerford, in the 51st of Edward III. 1376, to John Wood, Esq. the 22d of Edward IV. 1483.

3. In 1413, the first of Henry V. William Stourton was elected, and accepted by the King as Speaker on the 18th of May; but being taken suddenly ill, on the 3d of June the Commons presented Sir John Doreward; who excused himself, but was approved by the King.—Rot. Parl. Vol. IV. p. 4 and 5.

4. On the 19th of March, 1436, Sir John Tirrel, the Speaker, being disabled from attending, by sickness, William Boerly, Esquire, is elected in his room.—Parliamentary History, Vol. II. p. 231.—Vide Elfyngge, p. 254.—Rot. Parl. Vol. IV. p. 496—502.

5. In 1450, Sir John Popham was chosen Speaker, but his excuse was accepted by the King, and he was discharged\*; and on the same day, the Commons presented William Tresham, Esquire, who was allowed.—Parliamentary History, Vol. II. p. 253.—Rot. Parl. Vol. V. p. 171—172.

6. On the 15th of February, 1454, Thomas Thorpe, Esquire, Speaker, being detained a prisoner in execution, by the overbearing power of the Duke of York, the Commons elect a new Speaker in his room†.—Parliamentary History, Vol. II. p. 271.—Rot. Parl. Vol. V. p. 240.

7. On the 30th of September, 1566, the Speaker, Mr. Williams, being dead, during a prorogation;—See the proceedings to the choice of the new Speaker, Mr. Onslow, the Solicitor General;—Parliamentary History, Vol. IV. p. 53. 59.

\* The words of the Record are, "Rex ipsam suam excusationem admittit, et ipsam de occupatione predicta exoneravit."

† See this Record, and the observations upon the proceeding, in the former volume, p. 28. No 15.

8. On the 16th of January, 1580, Sir Robert Bell, the Speaker, being dead since the last session, there is a curious entry in the Journal, on the proceeding to the choice of a new one: Mr. John Popham, the Queen's Solicitor General, is elected on the 18th of January; and for that purpose is brought down by the Queen's Serjeant, and the Attorney General, from the House of Lords, "and is restored to the House of Commons as a Member of the same."

9. On the 22d of February, 1592, Sir Edward Coke, in his disabling speech says, "This is only as yet a nomination, and no election, until your Majesty giveth allowance and approbation." —Parliamentary History, Vol. IV. p. 345.

10. On the 16th of March, 1606, the Speaker was ill, yet on this and the following days business was done; and on the 23d several proposals are made, to obviate the difficulties arising from this accident.

11. On the 4th of February, 1672, Sir Edward Turner being made Lord Chief Baron, a new Speaker is chosen; and then several motions being offered to be made, the House are of opinion, that after a Speaker is elected, no motion can be debated, or business entertained, till the Speaker be presented, and approved by the King.—But see the 19th of January, 1580.

12. On the 18th of February, 1672, Mr. Speaker being ill, sent a letter to the King, to desire leave to retire, and to give the Commons leave to chuse another Speaker; and \* Sir Edward Seymour is chosen accordingly.

\* This Gentleman was at this time only Mr. Seymour, as he did not succeed to the title till several years after; but as he is more generally known by the name of Sir Edward Seymour, this distinction will not be observed.

13. On the 27th of October, 1673, a motion is made, and question put, that Mr. Speaker do leave the Chair, and a Speaker *pro tempore* be appointed; but passed in the negative on the previous question \*.

14. On the 11th of April, 1678, the Speaker being taken dangerously ill, and the King's leave to proceed to a new choice being signified to the House, Sir Robert Sawyer is chosen Speaker. But on the 6th of May, the former Speaker being recovered, the new Speaker is taken ill, and the other is re-chosen.

15. On the 6th of March, 1678, the Commons chose Sir Edward Seymour, Speaker; but on his being presented to the King, on the 7th, the Lord Chancellor, by his Majesty's command, disapproves of him, and directs them to proceed to another choice.—See the debates upon this subject, in the 6th vol. of Grey's Debates, p. 404, till the 13th of March, when the King prorogued the Parliament; in the next session Serjeant Gregory was chosen. Nothing of this dispute appears in the Journal of either House.

16. On the 12th of April, 1679, a standing order, that upon any vacancy, no motion be made for chusing a new Speaker, till after eleven o'clock.

17. On the 13th of March, 1694, Sir J. Trevor, being suddenly taken ill, excuses his attendance; on the 14th, his Ma-

\* See the debate upon this question in Grey's Debates, Vol. II. p. 186. where it appears, that several objections were made to Sir Edward Seymour's continuing to be Speaker: 1. That he had been made a Privy Counsellor. 2. That he was Treasurer of the Navy, and therefore a Publick

Accountant. 3. Mr. William Harbord tells the Speaker, "You expose the honour of the House in resorting to gaming-houses, with Foreigners as well as English, and in ill places. Think you to be an unfit person to be Speaker, by your way of living."

jefty's leave being signified, the House proceed to another choice; Sir Thomas Littleton and Mr. Foley are proposed; there is a division upon Sir Thomas Littleton, and carried in the negative; and Mr. Foley is elected \*.

18. On the 6th of December, 1698, there is a question on the election of Sir Thomas Littleton and a division, though it does not appear, that there was any other person proposed.—The same happened on the election of Mr. Harley on the 10th of February, 1700.

19. On the 30th of December, 1701, two persons are proposed, Sir Thomas Littleton, and Mr. Harley; a negative is put upon Sir Thomas Littleton, and Mr. Harley is chosen.

20. On the 25th of October, 1705, Mr. Smith and Mr. Bromley being proposed, Mr. Smith is elected on a division.

21. On the 23d of October, 1707, a debate at what time the Mace ought to be laid upon the Table; and directed to be, as soon as the Speaker sits down in the Chair †.

22. On the 17th of November, 1708, Sir Richard Onslow is elected Speaker, when the Parliament is opened by commission, and on the 18th is presented to the Commissioners, who declare

\* The entry of these Proceedings upon the 14th of March, was settled by a Committee, appointed on the next day, of which Mr. Harley was Chairman, and ordered to be so entered in the Journal; as appears from the 20th of April, 1695.—See also the note at the bottom of page 271 of the

printed Journal of the Commons, Vol. XI.

† This was after reading and considering the proceedings on the 14th of March, 1694, upon the election of Mr. Foley, as drawn up by a Committee appointed for that purpose.

their approbation of him (in her Majesty's name) by virtue of the commission which had been read the day before.—See a similar proceeding the 16th and 18th of February, 1713; and also on the 31st of May, and 1st of June, 1754; and on the 10th and 11th of May, 1768.

23. On the 22d of January, 1770, Sir Fletcher Norton is elected Speaker, upon a division, in the room of Sir John Cust, who had resigned the office \*.

24. On the 5th of January, 1789, Mr. William Wyndham Grenville is elected Speaker, upon a division, in the room of Mr. Cornwall, deceased.

25. On the 9th of June, 1789, Henry Addington, Esquire, is elected Speaker, upon a division, in the room of Mr. Grenville, who had vacated his seat, by accepting the office of Secretary of State.

## O B S E R V A T I O N S.

The forms of the election of a Speaker require that the person proposed should be present in the House when he is nominated; and it is to be desired, in order to avoid future inconveniences and trouble, that he should be a Member, upon whose seat there is no probability of a question †. Formerly, the person in the

\* See on the 17th of January the message sent by Sir John Cust to the House, and the proceedings thereupon.

† See the 7th chap. of Elfyng, p. 155, on the subject of electing a Speaker, and his duty.

Chair held a considerable office at the same time; Sir Edward Coke was Solicitor General to Queen Elizabeth, Sir Edward Seymour was Treasurer of the Navy, Mr. Harley was \* Secretary of State, Sir Spencer Compton was Paymaster of the Army, and Mr. Onslow held the office of Treasurer of the Navy for some years, whilst he was Speaker, but resigned it, perhaps to avoid those insinuations of partiality, and dependence on the Ministers, which we see, from Grey's Debates, were so frequently thrown out against Sir Edward Seymour.

When but one person is proposed for Speaker, and there is no objection made to him, it has not been usual to put any question to the House; but, † without a question, the Members proposing him take him out of his seat, and conduct him to the Chair.—But if any objection is made, ‡ and any other person is proposed, the sense of the House must be taken by a question on the name of the person first proposed to them.—This question is put by the Clerk; and on these occasions, it is stated in the Journal, that the Clerk, by ‘order of the House,’ puts the question.—As soon as

\* Mr. Harley was appointed Secretary of State in the Spring of 1703–4, whilst he was Speaker, and held these offices together for above a twelvemonth, till the Parliament was dissolved.—This was before the Act passed, which vacated the seats of Members, accepting offices of profit from the Crown.

† Elsyng, p. 160.—Yet in the instances of Sir Robert Phelps, on the 19th of March, 1603, and Mr. Williams, the 21st of October, 1680, and Sir John Trevor, 20th of March, 1689, Questions were put, though no other person was named, or any objection made.—See also N° 18.\*

‡ On the 1st of October, 1566, when Mr.

Onslow was proposed, he, being then Solicitor General, alledged many weighty reasons against it, on account of his attendance upon the House of Lords, and the oath he had taken to the Queen: Upon this objection, though no other person was proposed, the House divided, 82 for his being Speaker, and 70 against it; and so he was elected.—So on the 19th of March, 1603, when Sir Robert Phelps was named, and excused himself, the House, notwithstanding his excuse, was willing to proceed to question, and directed the Clerk, to make the question upon his name, which done, he was by general acclamation chosen Speaker.



the Speaker is chosen, and sits down in the Chair, the Mace is to be laid upon the Table, 'by the Serjeant;' before the election, it should be under the Table; and the House cannot proceed to the election of a new Speaker without the Mace.—This objection was, I conceive, very properly made, on the 13th of March, 1694, on Sir J. Trevor's being taken ill.—Another point \* essentially necessary, to enable the House to proceed to elect a Speaker, is a direction or permission from the King, either signified by the Lord Chancellor, in the House of Lords, or by some Privy Counsellor, in the House of Commons †. But there are two instances occur in the history of this country, in which neither this form of having the royal permission to proceed to the election of a Speaker, nor the other of the King's approbation of the person elected, have been observed.—The first is, the election of Sir Harbottle Grimstone, on the 25th of April, 1660, to be Speaker of the Convention Parliament, which met at the Restoration.—The other is, the election of Mr. Powle, on the 22d of January, 1688, in the Convention Parliament, at the Revolution. It is obvious, that both these cases happened at a time, when there was no King, or person exercising the regal authority, existing in the country.—The Parliaments, of which those two gentlemen were chosen Speakers, were neither of them elected by virtue of writs from the Crown.—That chosen in 1660, was summoned upon writs issued, in pursuance of an ordinance passed on the 16th of March, 1659, by what is commonly called, "The Rump Parliament." Which ordinance is intituled, "‡ A Bill for dissolving the Parliament begun

\* Elsyngc, p. 162.

† And therefore, the motion, on the 27th of October, 1673, to remove Sir Edward Seymour, and appoint another Speaker pro tempore, was highly irregular.

‡ As I do not know that this ordinance

has ever been printed, I have had it transcribed from the ingrossed record, which is preserved in the office of the Clerk of the House of Commons; and it is inserted in the Appendix, N° 4.

“ and holden at Westminster, the 3d of November, 1640, and for  
 “ the calling and holding a Parliament at Westminster, on the  
 “ 25th day of April, 1660.” Charles the II<sup>d</sup>. was not at this  
 time recalled; nor acknowledged, by the ruling powers, or by the  
 nation at large, to be the legal sovereign.—The Parliament chosen  
 in 1688, was, by virtue of letters written by the Prince of Orange,  
 and directed to the several counties, cities, and boroughs in  
 England and Wales, for calling a Convention. This Convention,  
 so summoned, met on the 22d of January; and it was not till the  
 13th of February, that the Crown was offered to, and accepted by,  
 the Prince and Princess of Orange.—And in both these instances,  
 it was thought necessary, as soon as the regal power was re-  
 established, immediately to pass an Act of Parliament, “ For re-  
 “ moving and preventing all questions and disputes concerning the  
 “ assembling and sitting of the present Parliament;” \* by which  
 acts every defect of form or default in the proceedings of those  
 assemblies was cured and amended.—The deviation, therefore,  
 from the usual course of proceeding in the election of a Speaker,  
 was at both these periods an act of necessity.—The nation acknow-  
 ledging no King; nor any mode existing of signifying the royal  
 authority, either to direct the Commons to proceed to the choice  
 of their Speaker, or to approve him when chosen; these instances  
 † do not contradict the doctrine, that has been just laid down, and  
 which is founded in, and supported by, the uniform course of  
 precedents, from the earliest accounts of the proceedings of the  
 House of Commons to this time.

\* See statute 12th Charles II. chapter the 1st, and the 1st William and Mary, chapter the 1st.

† How far these precedents authorized a similar proceeding in the House of Commons, in the choice of a Speaker, on the 5th of January, 1789, under circumstances not

exactly similar with those of 1660 or 1688, it would be presumptuous in me to discuss; especially after what was suggested to the House by the Speaker, Mr. Grenville, on the 2d of February, and which is entered in the Journal of that day.

It has been usual \* for persons, when proposed to be Speakers, to decline that office, from a sense of their own insufficiency, and even on the steps of the Chair, to beg of the House to excuse them.

It also appears from Elfsynge, that when they have been presented to the King, for his approbation, the practice, for the last two hundred years †, has been, in their speeches at the Bar of the House of Lords, to express the diffidence they entertain of their capacity to execute so great a trust: Mr. Onslow says, in his first speech, on the 27th of January, 1727, "Happy is it, Sir, for your Commons, that your Majesty's disapprobation will give them an opportunity to reconsider what they have done; I am therefore to implore your Majesty to command your Commons to do, what they can very easily perform, to make choice of another person, more proper for them to present to your Majesty, on this great occasion."—The conduct of Sir Edward Seymour, when offered to King Charles II. on the 7th of March, 1678, is an exception to this rule; he, knowing that it had been determined, at a Council

\* Vide Elfsynge, p. 160–165.—See particularly Sir Richard Onslow's speech in the Lords Journals, 18th of November, 1708, where, on account of the death of Prince George of Denmark, the session was opened by Commissioners, the Queen not being present.

† This practice of the Speaker's desiring to be excused by the King, when presented to his Majesty for his approbation, appears, upon a more accurate examination, to be of a much earlier date than is suggested by Elfsynge. So long ago as the year 1381, the 5th of Richard II. Sir Richard Waldegrave makes this suit to the King: So in 1404, the 5th of Henry IV. Sir Arnold Savage; and in 1406, the 7th of Henry IV.

Sir John Tibtofte, who excuses himself on account of his youth, and want of discretion; and Sir Thomas Chaucer, in the 11th and 13th of Henry IV. and several others. Sir John Tibtofte did not think that the observance of this form derogated from the dignity of his office; although, from the character given of him by Prynne, if the excusing himself had been liable to such an imputation, he certainly would have declined making it. Prynne says, "Reader, thou mayest observe, that the Commons young Speaker in this Parliament took more upon him, spake more boldly and fervently to the King and Lords, than any Speaker did before him." Abridgement of Cotton's Records, p. 462.

the night before, to accept of his excuse, on account of some dispute he had at that time with Lord Danby, purposely avoided making any, in order to throw the greater difficulty on the Chancellor in refusing him. But that this arose from the particular circumstances he was in at that time, and not from any disinclination to pursue the forms observed by his predecessors, appears from his speech \* on the 18th of February, 1672, upon his first election to the office of Speaker.

I do not know any instance of the King's refusing his approbation of a Speaker, till the case of Sir Edward Seymour, in 1678, unless it is that of Sir J. Popham, in 1450: The case mentioned in Grey's Debates, of Sir J. Cheney, is not to this point; he was elected and approved, but was taken ill the next day †. Bishop Burnet says ‡, that "after the debate in 1678 had held a week, "and created much anger, a temper was found at last; Seymour's "election was let fall, but the point was settled, 'that the right "of electing was in the House, and the confirmation was a thing "of course'." By what authority the Bishop draws this conclusion from what passed at that time, I don't know §.

During the Speaker's absence ||, whether from illness, or any other

\* Vide Lords Journals.

† See the 2d vol. of Parliamentary History, p. 38.

‡ In the 1st vol. of the History of His Own Time, p. 453.

§ The Earl of Oxford (Harley) who had been Speaker, used to say, "That all that the Commons got by this contest was, "that the Speaker might be moved for by "one who was not a Privy Counsellor."—

Lord Russell now moved for Gregory.—Mr. O.

|| It appears from the proceedings upon the King's refusal to approve of Sir Edward Seymour, which, though expunged from the Journal, are to be found in the 6th vol. of Grey's Debates, p. 404, that several questions must have been moved, and debated, and put, though there was no Speaker. These questions must, in this instance, from necessity,

other cause no business can be done\*, nor any question proposed, but a question of adjournment; and that question must be put by the Clerk †. This has been often, and must always be a very great inconvenience; and it is grown much greater lately, from the quantity of business, and the length of sittings of the House of Commons; many propositions have been made, of having a Deputy Speaker, a Speaker pro tempore ‡, &c.; but nothing of this kind has yet taken place §.

There is one part of the Speaker's duty, that of issuing his warrant to the Clerk of the Crown for making out writs for the election of Members, in the room of such Members as shall die,  
or

necessity, have been put by the Clerk. It is expressly said, that the question for adjourning was put by him; so that, upon returning from the House of Lords, Sir Edward Seymour did not resume the Chair.—And it should seem from the speech of Sir Harbottle Grimstone, p. 409, and from Sir Thomas Lee's speech, p. 427, that Sir Edward Seymour was not present at these debates; probably from a doubt where he ought to sit, whether in the Speaker's chair, or as a private Member.

\* On the 18th of November, 1763, upon Sir John Cust, the Speaker's, being ill, and sending a message to the House by the Clerk, there was some doubt, whether the Mace ought not to have been in the House, and under the Table; but upon consideration, it was determined that it ought not: the Mace, though belonging to the House, is in the custody of the Speaker; and until he declines to act as such, the Mace must be kept by him. Accordingly, in this and several other similar instances, the House adjourned themselves without the Mace.—When there is a

vacancy of a Speaker, as on the 22d of January, 1770, the practice is different.

† See the 8th and 9th of March, 1730, the 20th of February, 1737, and the 20th of April, 1738, the proceedings on the indisposition of Mr. Onslow.—On the 20th of March, 1710, the House adjourned from Tuesday to the Monday following, on account of the death of Mr. Bromley, the Speaker's son, “out of respect to the father, and to give him time, both to perform the funeral rites, and to indulge his just affliction.” Commons Debates, Vol. IV. p. 199. No reason for this adjournment is given in the Journal.—See also the 23d of February, 1747, when the House adjourned for a week upon Mr. Onslow's illness.

‡ See the entry in the Journal of the 23d of March, 1606, where, in the absence of the Speaker from illness, there is a long debate, and several proposals made for supplying his place.

§ Vide the 27th of January, 1656; the 9th of March, 1658; and 13th of January, 1659; where, the Speaker being ill, other Speakers

or become Peers, during a recess of Parliament, which, by a late Act of Parliament, he is enabled to execute by Deputies, appointed by himself, in case he shall be absent out of the realm \*.

On a division upon the question for Speaker, the House divide in the House, as if they were in a Committee, to the right and left, and the Clerk appoints one Teller on each side.

Speakers are appointed pro tempore. These instances occurred in the Parliaments which were holden during the Interregnum.—See in Whitelock's Memorials on the 18th of February, 1656, a difficulty arising, to which of the two Speakers the fees for private bills were to be paid; whether to himself, or Sir Thomas Widdrington, in whose room he had been chosen.

\* See the statute 24th George III. ch. 26, directing the Speaker to appoint a certain number of persons, being Members of the House of Commons, with authority, in case of the Speaker's death, or of his seat being vacated, or of his absence out of the realm, to issue warrants for electing Members.

## S P E A K E R.

### *His Duty, in praying the Privileges of the House of Commons.*

1. **I**N 1566, Mr. Onflow being elected Speaker in the middle of a Parliament, omits the prayer for liberty of speech, and freedom from arrests.—Parliamentary History, Vol. IV. page 53, 59, and 235 \*.

2. On the 5th of February, 1672, Serjeant Charlton elected Speaker, on a vacancy, prays all the privileges. But this was certainly irregular.—See the election of Sir Edward Seymour, on the 18th of February; who commits the same error.

3. On the 15th of March, 1694, Mr. Foley very properly follows the precedent of Mr. Onflow in 1566, and prays only his excuses for his own faults and mistakes. And it appears, that he made the omission of the other privileges, from the directions he had received from the House the day before, the 14th of March.

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## O B S E R V A T I O N S.

Mr. Hackwill, in a debate, which is in the Journal, upon this subject, on the 17th of December, 1621, says, “ The

\* See the Commons Journals—on the election of Mr. Popham to be Speaker, on the 20th of January, 1580.

“ ‘ prayer ’ for our privileges was first used in the first year of Henry IV. ; anciently ‘ protestations ’ were made by the Speaker in this point \*.” Whatever the form was, it seems agreed that, on presenting the Speaker to the King, and after he had been approved of, it was always customary for the Speaker to claim the several privileges, of freedom of speech, from arrests, &c. Not that the Commons, by this ceremony, ever acknowledged what James I. in his answer to the petition of the House of Commons, in 1621, † says he could have wished that they had said, “ that their privileges were derived from the grace and permission of Our ancestors and Us, and not have used the stile of your antient ‘ and undoubted right of inheritance ‡ ’.” But they considered

\* The words of the Record referred to by Mr. Hackwill are, “ Qu’ils purroient avoir leurs libertee en Parlement, come ils ont eue devant ces heures.” Rot. Parl. Vol. III. p. 424.—The usual protestation made by the Speaker to the King, “ That the proceedings of the Commons may receive the most favourable construction ; and that whatever he should speak, which might be taken in evil part, might be imputed to his ignorance, and not unto the Commons,” is as ancient as there is any account of Speakers upon record.—See particularly the protestation of Sir Peter de la Mare in 1377, and of Sir John Gildesborough, in 1379, Rot. Parl. Vol. III. p. 5 and 73 ; and those of almost every subsequent Speaker.

† See the history of this transaction, and several others of a similar nature, in the third chapter of the former Vol: p. 133, N° 6.

‡ See the 2d vol. Parliamentary Debates, in 1620–1, p. 327.—Much earlier in the reign of James I. indeed in the very first year, he had, through his Counsellors in the House of Commons, taken some steps, that

made it necessary for the House of Commons to explain upon what ground the request of the Speaker, for allowing their privileges, was made ; and therefore in a representation, intituled, “ An Apology of the House of Commons touching their privileges,” they declare,

“ (1.) That our privileges and liberties are our right and due inheritance, no less than our very lands and goods.

“ (2.) That they cannot be withheld from us, denied, or impaired, but with apparent wrong to the whole state of the realm.

“ (3.) And that our making of request in the entrance of Parliament, to enjoy our Privileges, is an act *only of manners*, and doth weaken our Right no more than our suing to the king for our lands, by petition.—Which form, though new and more decent than the old, by præcipe, yet the subject’s right is no less now than of old.” — See Commons Journal, 20th June, 1604, where the beginning only of this apology is inserted.—Nor, though a very curious and interesting paper, is it to be found in the Parliamentary History.—It



considered it as a public claim and notification to the King; and to the people, of the privileges of the House of Commons, in order that no man might plead ignorance \*.

When this claim had been once made at the beginning of a Parliament, it was certainly right in Mr. Onslow, in 1566, and the other Speakers who were elected, on vacancies of the Chair, in the middle of a Parliament, not to renew the claim, but to confine themselves to make their own excuses and apology. And therefore Serjeant Charlton and Sir Edward Seymour, in 1672, were misled, in not attending to this distinction; and accordingly we see, that the House themselves directed Mr. Foley not to make the usual petitions; "it being said, that those petitions were demands of right, and ought to be made but once, at the beginning of a Parliament †."

On the meeting of the new Parliament, in November, 1774, a doubt was conceived, whether the Act which had lately passed, and which had taken away all privilege of Parliament ‡ from the servants of Members, ought not to have made some alteration in the form of the Speaker's prayer. I confess I was of that opinion; and Sir Fletcher Norton at first intended to make an alteration, by claiming all the usual privileges, "except where the same had been varied or taken away by any Act of Parliament." And accordingly, as soon as he was elected Speaker, he communicated this his intention to the House. However upon further consideration, and conversation with Lord Apsley

is however printed at length in Petyt's Jus Parl. chap. 10th, p. 227, and in the Appendix to the first volume of this Work, No 1.

\* Vide, Edynge, p. 168.

† See what Mr. Grenville, the Speaker, says upon this subject, in what he suggests to the House on the 2d of February, 1789.

‡ The 10th Geo. III. ch. 50.

the Lord Chancellor, he thought it better to abide by the ancient form: Lord Apsley advised this, and said, "that as no alteration had been made formerly, on the passing of the Act in \* King William's time, relating to the privilege of Parliament; and as, whatever the Commons claimed, neither the allowance of the King, nor indeed the claim itself, could be supposed to include privileges not warranted by law; he was of opinion, that it would be the safer way, in order to prevent any difficulties which might arise upon an alteration, to adhere to the usual form; and that he was ready to give the King's answer in the accustomed words." Sir Fletcher Norton acquiesced in this; and accordingly sent to acquaint Lord Apsley, that he would make the claim, in the ancient form of words, without any alteration; he did so, and received the usual answer †.

This matter, therefore, whether at the time decided right or wrong, is now at rest.

\* See the 12th and 13th of William III. chap. 3.—But the difference between this Act and the statute of the 10th of George III. chap. 50, with respect to this question, is, that the former Act left *certain privileges* to the *servants* of Members; so that the Speaker might still very properly claim *those* privileges, whatever they were: But the latter Act expressly takes away from servants *all* privilege whatever, personal, as well as pri-

vilege from suits: It seems therefore rather particular, that the Speaker of the House of Commons should pray, and the Lord Chancellor, in his Majesty's name, should *allow*, privileges to a set of men, who, by law, have no privilege at all.

† The same form was used at the opening of the Parliament which met in October, 1780, and has been continued in the subsequent Parliaments.

## S P E A K E R.

III. *His Duty, in keeping Order in the House.*

1. **O**N the 14th of April, 1604\*, rule conceived, That if any man speak impertinently, or beside the question in hand, it stands with the orders of the House for the Speaker to interrupt him; and to know the pleasure of the House, whether they will further hear him.

2. On the 17th of April, 1604, agreed for a general rule, If any superfluous motion, or 'tedious' speech be offered in the House, the party is to be directed and ordered by Mr. Speaker.

3. On the 19th of April, 1604, agreed for a rule of the House, 'Qui digreditur a materia ad personam,' the Speaker ought to suppress.

4. On the 19th of May, 1604, Sir William Paddy entering into a 'long' speech, a rule agreed, That if any man speak not to the matter in question, the Speaker is to moderate.—So it is said, on the 2d of May, 1610, when a Member made what seemed an impertinent speech, and there was much hissing and spitting, "That it was conceived for a rule, that Mr. Speaker may stay " impertinent speeches †."

5. On

\* The Journal says, " Sir Henry Jenkins was observed to mistake the question, and therefore, to prevent the idle expence of time, was interrupted by Mr. Speaker."

† In a book published in 1641, intituled, " The Orders, Proceedings, Punishments, and Privileges of the Commons House of Parliament in England," it is said in chapter

## *His Duty, in keeping Order in the House.* 299

5. On the 5th of May, 1614, Sir Edwyn Sandys says, "When Mr. Speaker offereth to speak, every man ought to be silent."

6. On the 10th of November, 1640, it was declared, That when a business is begun, and in debate, if any man rise to speak to a new business, any Member 'may,' but Mr. Speaker 'ought,' to interrupt him.

7. On the 5th of May, 1641, resolved, That if any man shall whisper, or stir out of his place, to the disturbance of the House, at any message or business of importance, Mr. Speaker is ordered to present his name to the House, for the House to proceed against him as they shall think fit.

8. On the 22d of January, 1693, to the end that all the debates in this House should be grave and orderly, as becomes so great an assembly, and that all interruptions should be prevented; Be it ordered and declared, "That no Member of this House do  
" presume to make any noise or disturbance whilst any Member  
" shall be orderly debating, or whilst any Bill, Order, or other  
" matter, shall be in reading or opening: And in case of such  
" noise or disturbance, that Mr. Speaker do call upon the Member  
" 'by name,' making such disturbance; and that every such per-  
" son shall incur the displeasure and censure of the House."

9. On the 15th of December, 1792, in obedience to this order, Mr. Speaker called upon a Member by name, who was immediately directed to withdraw.

chapter 5th, p. 8. "If any speak too long,  
" and speak within the matter, he may not  
" be cut off; but if he be long, and out of  
" the matter, then may the Speaker gently

" admonish him of the shortness of the time,  
" or the business of the House, and pray  
" him, to make as short as he may."

## O B S E R V A T I O N S.

It is very much to be wished, that the rules, which have been from time to time laid down by the House \*, for the preservation of decency and order, in the debates and behaviour of Members of the House, could be enforced, and adhered to more strictly than they have been of late years: It certainly requires a conduct, on the part of the Speaker, full of resolution, yet of delicacy: But, as I very well remember that Mr. Onslow did in fact carry these rules into execution, to a certain point, the fault has not been in the want of rules, or of authority in the Chair to maintain those rules, if the Speaker thought proper to exercise that authority. The neglect of these orders has been the principal cause of the House sitting so much longer of late years than it did formerly; Members not only assume a liberty of speaking beside the question, but, under pretence of explaining, they speak several times in the

\* The following entry in the Journal of the speech of Mr. Popham, and the proceedings on the 21st of January, 1586, when, having been confirmed by Queen Elizabeth, he took the chair as Speaker, comprehend many points, that, at this day, may be well worth attending to:—"Mr. Speaker made a short oration, partly touching himself, and partly touching the Members of the House; for his own part, acknowledging his infirmities, and praying both their patience and assistance. For them, he advised them to use reverend and discreet speeches; to leave curiosities of form; to speak to the matter; and, for that the Parliament was like to be very short, willed them to forbear speaking to bills at the first reading; and not to spend too much time, in unnecessary motions or superfluous argument; and further desired them, that they would see their ser-

vants, pages, and lacquies, attending on them, kept in good order." Which ended, a motion was made, "That Mr. Speaker, and the residue of the House, of the better sort of calling, would always, at the rising of the House, depart and go forth in comely and civil sort, for the reverence of the House; in turning about with a low curtesy, like as they do make at their coming into the House; and not so unseemly and rudely to thrust and throng out, as of late time hath been disorderly used," Which motion was very well liked of, and allowed of all the House.—In conformity to this antient rule, Mr. Onslow never permitted a Member to come in, or go out of the House, whilst he was in the Chair, without calling to him, if he observed, that the Member did not make his obeysance to the Chair..

same debate, contrary to the express orders of the House \*. And, as is said on the 10th of November, 1640, though in this case any Member 'may,' yet Mr. Speaker 'ought,' to interrupt them; for the Speaker is not placed in the Chair, merely to read every bit of paper, which any Member puts into his hand in the form of a question; but it is his duty to make himself perfectly acquainted with the orders of the House, and its ancient practice, and to endeavour to carry those orders and that practice into execution. If, upon repeated trials, he should find that the House, in contempt of the orders of the 5th of May, 1641, and the 22d of January, 1693, refuse to support him in the exercise of his authority, he will then be justified, but not till then, in permitting, without censure, every kind of disorder; viz.

Members speaking † twice, or oftener, in the same debate, the 14th of May, and 23d of June, 1604, and 24th of April, 1621, and 25th of March, 1626.

Members speaking impertinently, or beside the question—the 28th of June, 1604.

Using unmannerly or indecent language against the proceedings of the House ‡—the 13th and 16th of February, 1606;

\* See under p. 96—99.

† An order of the House, that none may speak twice to one Bill or Motion in the House, in one day, unless it be on new matter; but as often as they will at a Committee.—Parliamentary Proceedings in 1620—1, Vol. I. p. 28.—On the 9th of May, 1626, upon an adjourned debate, Mr. Noy, having yesterday spoken in it, demanded, Whether he might this day speak again to the same matter.—And resolved he might.—So on the 16th of July, 1660.—On resuming the debate upon the Bill of Tonnage and Poundage; and leave being desired for Mr. Bro-

derick, who had once spoken, to speak again to the question.—Resolved, "That Mr. Broderick have leave to speak again in this business."

‡ The antient practice, and which in my memory was strictly adhered to by Mr. O. was, That no Member had a right to speak against, or reflect upon, any determination of the House, unless he meant to conclude with a motion for rescinding such determination. The ground and reason for this rule is obvious, "That to cavil at, or throw reflections upon, what the House have actually decided, besides the indecency which

1606 ; the 9th of May, 1626 ; the 27th of May, 1641 ; and the 7th of December, 1666.

Or against particular Members \*—the 7th, 8th, and 9th of May, 1621 ; the 6th of August, 1625 ; the 5th of November, 1641 ; the 21st of February, and 12th of March, 1718 †.

## Using

“ which such a proceeding bears upon the face of it, can have no other possible effect, than to introduce reply and recrimination ; which, as the House are not called upon to put an end to by a question, must deviate into warm and personal altercations.” Mr. O. in this case, whenever a Member was proceeding to argue against a former decision of the House, always stopt him, by saying, “ This question is over, the majority of the House have determined upon it, and you, Sir, are included in that majority : It is the declared sense of the House.” There is an instance on the 22d of May, 1661, to this point—Sir Ralph Ashton, a Member, desires he may be admitted to shew his particular reason, why he could not receive the Communion as enjoined by an order of the House, of the 13th of May, “ That all the Members should receive it.” Whereupon some other Members going about to draw into debate that order, the question was put, That liberty should be given to *debate again* the said order ; and it passed in the negative, That such liberty should not be given.

\* It is impossible to lay down any specific rules upon this point, or to declare beforehand what expressions are or are not contrary to order ; so much depends upon the tone, and manner, and intention of the person speaking :—something upon the person to whom they are addressed, whether a Minister, in a responsible station, or a private Member not in office ;—whether the words

are meant to be applied to his public conduct, or to his private character ;—the degree of provocation which the Member speaking had received from the person he alludes to : all these considerations must be attended to at the moment, as they are infinitely various, and cannot possibly be foreseen in such a manner as that precise rules can be adopted with respect to them. When the Speaker observes upon any expression as personal and disorderly, and tending to introduce heat and confusion, and this appears to be the general sense of the House, the Member offending ought immediately to make an apology, and to ask pardon of the House for this breach of their order, in as large and liberal expressions as possible, so as in such apology to comprehend the person of whom the words were used. This is often very difficult to be obtained, especially when the offending person thinks he had sufficient provocation for using the expressions objected to. This consideration ought to be a warning to the House, and particularly to the Chair, to interfere at first ; and not to permit any expressions to pass from a Member unnoticed, which, being applied by any other Member as personally offensive to him, may draw forth further words of heat and contumely, till at last confusion arises—different Members take a warm and eager part in the dispute—and, besides the time that is lost in composing these differences, the House of Commons exhibits a scene of indecency and disorder, not  
very

Using the King's name irreverently, or to influence the debate ‡—the 5th of March, 1557; the 4th of May, 1624, in the Journal, page 697; the 5th of April, 1715.

Hissing or disturbing a Member in his speech \*—the 20th of June, 1604; and the 8th of February, 1661.

Walking up and down the House, standing on the floor, in the gangways ||, or in the gallery—the 10th of February, 1698; and the 16th of February, 1720.

Taking papers and books from the Table, or writing there, to

very becoming their character as gentlemen, much less as one of the component parts of the great Council of the nation assembled in Parliament. There is a very curious debate on the 7th of May, 1689, upon some words, which passed between Captain Bertie and Mr. Harbord, where, after many difficulties, the Speaker proposed a form of words to be written down, and spoken by both the Members; which was accordingly done. Grey's Debates, Vol. IX. p. 234.—See an instance in the Lords Journal of the 17th of February, 1691, where Lord Lincoln's words were taken down, and, his Lordship brought to the Bar; where, after being reprimanded by the Speaker, he asked pardon of the House, and of Lord Rochester, to whom the disorderly words were addressed.—See in a note under title "Clerk—his Duty," in this volume, the several instances of words objected to as disorderly, and taken down at the table.

† See in the 3d Volume of this work, "Observations" to Title, "Proceedings" between Lords and Commons, where their Rights, &c. are concerned.

‡ See Chandler's Debates of the House of Commons, Vol. VII. p. 64.

\* On the 20th of March, 1604, Mr. Hext moveth against hissing, to the interrup-

tion and hindrance of the speech of any man in the House; taking occasion from an abuse in that kind offered on Saturday last.—A thing, he said, derogating from the dignity, not becoming the gravity, as much crossing and abusing the honour and privilege of the House, as any other abuse whatsoever.—A motion well approved.

|| In Vol. III. of Grey's Debates, p. 403, is the following entry:—

*Mr. Waller, who sat on the steps, upon the Speaker's calling to him to sit in his place, said,] Cuts are made in the seats for steps here in the House. He knows that in the long Parliament steps were seats, and seats were steps, as in an amphitheatre. The Rump put backs to our seats; and the steps, now new made, were seats—and he desires there may be some order made in it, if steps must not be seats.*

*Sir Thomas Meres.] It interrupts all debates, if one speaks not to your liking, Mr. Speaker. They are no seats, or seats, as you please.—He holds that the steps are no seats.*

*Sir William Coventry] Think that the thing is not so light. The greatest misfortune that ever was like to befall us last session, at a Committee, was about these seats. There was a doubt whether a gentleman*

was



to the great interruption of the Clerks—the 3d of April, 1677; and the 25th of March, 1699\*.

Crossing between the Chair and a Member that is speaking—or between the Chair and the Table—or between the Chair and the Mace, when the Mace is taken off the Table by the Serjeant.

All these rules I but too well remember that Mr. Onslow endeavoured to preserve with great strictness, yet with civility to the particular Members offending; though I do not pretend to say, that his endeavours had always their full effect. Besides the propriety, that in a senate composed of Gentlemen of the first rank and fortune in the country, and deliberating on subjects of the greatest national importance—that, in such an assembly, decency and decorum should be observed, as well in their deportment and behaviour to each other, as in their debates—Mr. Onslow used frequently to assign another reason for adhering strictly to the rules and orders of the House:—He said, it was a maxim he had often heard, when he was a young man, from old and experienced Members, “ That nothing tended more to throw power into the hands of Administration, and those who acted with the majority of the House of Commons, than a neglect of, or departure from, these rules— That the forms of proceeding, as instituted by our ancestors, operated as a check and controul on the actions of Ministers; and

was told twice. There was then a doubt, and there may be a doubt, and it had like at that time to have been fatal—would have a question about it.

*Sir Thomas Meres.*] A man ought not to be disquieted in his seat:—a man may be disquieted in this passage; therefore tis no feat.

\* In a debate on the 29th of March, 1677,

*Sir Thomas Meres* says, “ By our long sitting together, we lose, by our familiarity and acquaintance, the decencies of the House. I have seen five hundred in the House, and people very orderly; not so much as to read a letter, or set up a foot. One could scarce know that any person was in the House, but him that spoke.”

*Grey's Debates, Vol. IV. p. 331.*

“ that they were, in many instances, a shelter and protection to  
“ the minority, against the attempts of power.” So far the maxim  
is certainly true, and is founded in good-sense—that, as it is always  
in the power of the majority by ‘ their numbers,’ to stop any  
improper measures proposed on the part of their opponents, the  
only weapons, by which the minority can defend themselves against  
similar attempts from those in power, are the forms and rules of  
proceeding; which have been adopted, as they were found neces-  
sary, from time to time, and are become the Standing Orders of  
the House; by a strict adherence to which, the weaker party can  
alone be protected from those irregularities and abuses, which  
these forms were intended to check, and which the wantonness  
of power is but too often apt to suggest to large and successful  
majorities.—A story used to be told of Mr. Onslow, which those,  
who ridiculed his strict observance of forms, were fond of repeat-  
ing; That, as he often, upon a Member’s not attending to him,  
but persisting in any disorder, threatened to name him, “ Sir, Sir,  
“ I must name you:” On being asked, what would be the con-  
sequence of putting that threat into execution, and naming a  
Member, he answered, “ The Lord in Heaven knows !”—  
from whence they collected, that it was merely a threaten-  
ing expression of his own, that would have no consequences at  
all\*. He might have referred them to the Journal of the 5th

\* I should suppose, that, if the Speaker is  
compelled to name a Member, from his per-  
sisting obstinately in any irregularity, after  
having been frequently admonished from the  
Chair, the House ought to support the  
Speaker in his endeavours to enforce obe-  
dience to their orders, and should call upon  
the Member so named, to withdraw.—When  
he is heard, and withdrawn, the Speaker

will then state to the House the offence  
committed; and the House will consider  
what punishment they ought to inflict upon  
the offender.—See the proceedings in the  
Journals, in the instances of Mr. Edward  
Clarke, on the 6th of August, 1625; Mr.  
Dyet, the 9th of May, 1626; Mr. Watkins,  
the 16th of November, 1640; and Mr.  
Whitmore, the 15th of December, 1792.

of May, 1641, or of the 22d of January, 1693, where they would have found, that, if the Speaker is compelled to name a Member, such Member will thereby incur the displeasure and censure of the House.

\* See in the Journal of the 13th of May, 1614, the proceedings of the House, on a report made of great disorder, that had passed at a Committee, where the parties offending are ordered to acknowledge their error at the Bar.

## S P E A K E R.

IV. *His Duty in other Particulars.*

1. **O**N the 24th of March, 1603, upon a division, it belongs to the Speaker's place to appoint Tellers, two of either part indifferently.

2. On the 27th of April, 1604, agreed for a rule, That if any doubt arise upon a Bill, the Speaker is to explain, but not to sway the House with argument or dispute.

3. On the 23d of May, 1604, there is a very curious entry in the Journal, on the Speaker's having been guilty of an irregularity, in delivering to the King a Bill, of which the House had been in possession.

4. On the 21st of June, 1604, agreed for a rule, That, when Mr. Speaker desires to speak, he ought to be heard without interruption, if the House be silent, and not in dispute.

5. On the 9th of March, 1620, there is a long debate, in which the conduct of \* the Speaker is very much blamed; " That he  
" came out of the Chair without consent of the House, being re-  
" quired by the greater voice of the House to sit still." — " That  
" he sometimes neglects his duty to the House, in intruding  
" or deferring the question, and hath made many plausible  
" motions abortive." — " That Mr. Speaker is but a servant to

\* This Speaker was Sir Thomas Richardson, Serjeant at Law.

“ the House ; and not a master, nor a master’s mate \* ; and that  
 “ he ought to respect the meanest Member, as well as those  
 “ about the Chair.”

6. On the 20th of April, 1640—see the debate on the Speaker’s † having adjourned the House the last day of the last Parliament, without leave of the House ; and refusing to put a question that was moved ; and the House resolve this behaviour to be a breach of privilege, though after a verbal command from the King to adjourn ‡.

7. On the 28th of January, 1677, complaint is made of an irregular adjournment of the House by the Speaker ; which he justifies himself to have done, by the King’s command.—See a very good account of the debate upon this question, in the 5th volume of Grey’s Debates, page 5, and 122.

8. On the 19th of December, 1678, a standing order is made,

\* Sir Peter Hayman being questioned, before the Privy Council in 1628, about his conduct in the late Parliament, and being asked, “ Why he reprov’d the Speaker so sharply,” he replied, “ because he *was* the Speaker ; and so the servant of the House ; and one that ought to have applied himself to the commands of the House.” Parliamentary History, Vol. VIII. p. 355.

† This Speaker was Sir John Finch, afterwards Lord Keeper.—In the speech which the Lord Keeper Finch was admitted to make in the House of Commons, on the 21st of December, 1640, he endeavours to justify this measure, by saying, “ How much I did ther, in all humbleness, reason with his Majesty, is not for me here to speak ; only thus much let me say, I was

“ no author of any counsel in it ; I was only  
 “ a person receiving a commission. I de-  
 “ sire you all to consider, that if it had been  
 “ any other man’s case, as it was mine, how  
 “ he would have comported himself, be-  
 “ tween the displeasure of a gracious King,  
 “ and the ill-opinion of this honourable As-  
 “ sembly.” Parliamentary History, Vol. IX. p. 128.

‡ On the 28th of February, 1672, it is said in Grey’s Debates, Vol. II. p. 74.  
 “ The Speaker hastily quitted the Chair, as was urged by divers, without a question ; and Mr. Attorney took the Chair, for the Committee of the whole House, on the Bill of Supply. After several motions, the Speaker resumed the Chair, which he had several checks for leaving.”

That Mr. Speaker shall not at any time adjourn the House \*, without a question first put, if it be insisted upon †.

9. On the 12th of April, 1694, the numbers “on a ballot,” for appointing Commissioners for taking the public accounts, being reported to be equal, Sir James Houblon, and John Pascall, Esq; having each 110 votes, Mr. Speaker gives his voice for Sir James Houblon.—But on the 20th of April, 1711, the same circumstance happening again, the House resolve to proceed to another ballot.—And on the 29th of March, 1742, upon a similar event, the House direct the two foregoing instances to be read; and adopt the former, by desiring Mr. Speaker to exercise the ancient right of Speakers, in case of equality of votes ‡.

\* There is a similar order amongst the Standing Orders of the House of Lords, “That the Lord Chancellor is not to adjourn the House, without the consent of the Lords first had.”

† Ever since the order of the 19th of December, 1678, the practice has been, to put a question for adjourning, although it be not insisted upon.—But if notice be taken, that there is not a sufficient number of Members present (which must be forty at the least) to go on with business, or to determine a question, then the ancient power of the Speaker revives, and he is, without a question put, to adjourn the House; but he must do it to the usual time: and if this want of forty Mem-

bers happens after four o'clock in the afternoon (which is the hour for adjourning) he is to adjourn the House immediately, to the next sitting day, unless he perceives a sufficient number of Members coming in: But if it is before four o'clock, he is then to stay a reasonable time for Members to come in, and is not to adjourn the House till four o'clock, or till it is probable there will not be forty Members that day.—He is however to suffer no business to proceed till there be forty Members, after notice is taken that there are not so many.—Mr. O.

‡ See in the Journal of the 29th of March, Mr. Onslow's speech, and the proceedings of the House upon this occasion.

## O B S E R V A T I O N S.

The Speaker, though he ought upon all occasions to be treated with the greatest respect and attention by the individual Members of the House, is in fact, as is said on the 9th of March, 1620, but a servant to the House, and not their master: and it is therefore his first duty, to obey implicitly the orders of the House, without attending to any other commands. This duty is extremely well expressed \*, in a very few words, by Mr. Speaker Lenthall; who, when that ill-advised monarch, Charles the First, came into the House of Commons, and, having taken the Speaker's Chair, asked him, "Whether any of the five Members that he came to apprehend, were in the House?" "Whether he saw any of them? And where they were?" made this answer,

"May it please your Majesty,

"I have neither eyes to see, nor tongue to speak, in this place, but as the House is pleased to direct me; whose servant I am here; and humbly beg your Majesty's pardon, that I cannot give any other answer than this, to what your Majesty is pleased to demand of me."

\* Mr. Serjeant Glanville, when he was presented as Speaker to the King, for his approbation, on the 15th of April, 1640, says, "The House of Commons have met together and chosen a Speaker, one of themselves to be the mouth, indeed the servant, of all the rest; to steer watchfully and prudently in all their weighty consultations and debates; to collect faithfully and readily the vote and genuine

sense of a numerous Assembly; to propound the same seasonably, and in apt questions, of their final resolutions; and to represent them and their conclusions, their deliberations and petitions, upon all urgent occasions, with truth, with right, with life, with lustre, and with full advantage, to your Most Excellent Majesty." Lords Journal.

It is impossible not to admire the cool temper of Rushworth, who was at this time Clerk Assistant; and, as he tells us himself\*, without being alarmed or astonished at this very new and extraordinary scene, had the presence of mind to take down the King's speech, and the Speaker's answer, in short-hand, at the table, as they spoke them; which the King observing, sent for him that evening, and with some difficulty, obtained a copy of his notes. The uncommonness of the transaction had, I suppose, made him neglect the order given to him by the House, on his appointment to his office, on the 25th of April, 1640: "That Mr. Rushworth  
 " do not take any notes here, without the precedent directions and  
 " command of the House, but only of the orders and reports made  
 " in the House."

The Speaker ought to be very cautious, and pay an exact attention to the rule laid down on the 27th of April, 1604, "That 'in matters  
 ' of doubt ' he is ' to explain,' but not to ' sway.' In matters of  
 doubt, or if he is referred to, to inform the House in a point of order or practice †, it is his duty to state every thing he knows upon the subject, from the Journals, or the History of Parliament; but he ought not to argue, or draw conclusions from this information ‡. He

\* See Rushworth's Historical Collections, Vol. IV. p. 478.—See also the whole of this transaction, in the Appendix to the first volume of this work, No 4. See also the note to p. 217 of that volume.

† See in Chandler's Debates, Vol. VII. p. 267, a speech of Mr. Onslow's upon this subject.

‡ The Speaker is not obliged to be at Committees of the whole House; when he is there, he is considered as a private Member, and has a voice accordingly: He is supposed, whilst the House is in a Committee, to be in his private room, and is not, upon a

division, compellable to come out of it, as other Members are, who may happen to be there. Mr. O. But though the Speaker, whilst the House is in a Committee, may be in his private room, he must not go from thence or be absent from the House; as, if any disorder arises in the Committee, he may be called upon immediately to take the Chair.—On the 29th of February, 1695, Mr. Speaker resumes the Chair, and Mr. Chancellor of the Exchequer reports, "That  
 " he was directed to leave the Chair, upon  
 " account of a matter of Privilege." So on the 4th of December, 1717. On the 9th  
 of



He has no voice, but to utter the sense of the House, when declared \*.

If, however, as has frequently happened, the numbers upon a division should be equal †, and it thereby becomes the Speaker's office to give a casting voice, it has been sometimes usual, in giving this vote, to give, at the same time, the reasons which induce him to it ‡; but, at that moment, all possibility of his swaying or influencing the House by these reasons is past §.

It

of May, 1788, the House having been in a Committee upon the charges against Sir Elijah Impey, Mr. Speaker resumes the Chair, "And a matter of dispute which had arisen in the Committee, between two Members, being adjusted," the House again resolved itself into the said Committee.

\* It appears from Grey's Debates, Vol. III. p. 38, that Sir Edward Seymour, in a debate in the House upon the state of the Navy, the 24th of April, 1675, proffered, as Treasurer of the Navy, to speak to the point from the Chair.—He is told by several Members, "That he cannot speak without leave."

† On a division, upon the 19th of April, 1714, touching the drawback of tobacco, the numbers being equal, the Tellers came up in the usual manner; but it was agreed by many ancient Members, that this was wrong, and that the Tellers ought to have come up mixed.—So it was said to happen when Sir John Trevor was Speaker; and, the Tellers coming up in the usual manner, he sent them to the Bar again, and by his direction they came up mixed. Mr. O.

Note.—The usual manner is, for those Tellers who have told on the part of the majority, to take the right hand in coming up; making their obeysances to the Chair (all

four) and for one of them to make the report of the numbers to the Speaker.

‡ See the 14th of July, 1640; 7th of May, 1714; 29th of March, 1742; 2d of March, 1748; 15th of May, 1759; 17th of March, 1766; and 30th of May, 1793; in all which instances the Speaker declared the reasons of his vote.

§ An attempt was made in the year, 1601, that the Speaker should vote, as the Speaker of the House of Lords does, though the votes were not equal. Upon a division, on the 12th of December, about a Bill for going to Church on Sundays, the Ayes were 105, and the Noes 106; but then the Ayes said, they had Mr. Speaker's voice, which would make it even. And it grew to a question, Whether he had a voice?—Sir Edward Hobby said, That when her Majesty had given us leave to chuse our Speaker, she gave us leave to chuse one out of our own number, and not a stranger; and therefore he hath a voice.—To which he was answered by Sir Walter Raleigh, and confirmed by the Speaker himself, That he was foreclosed of his voice by taking that place, and that he was to be indifferent to both parties, and withal shewed that the Bill was lost.—And Mr. Secretary Cecil said, "The Speaker hath no voice; and, though I am sorry to  
" say

It is part of the Speaker's office, to sign warrants to the Clerk of the Crown to make out new writs, for the electing of Members, to serve in the room of Members deceased, or whose seats are become vacant from any other cause. In the year 1672 an attempt was made by Lord Shaftsbury\*, then Chancellor, to arrogate to the Crown this privilege of issuing writs during a prorogation; and accordingly, in the very long recess, which lasted from the 22d of April, 1671, to the 4th of February, 1672, a space of almost two years, several writs were issued by the King's order, under the Great Seal, for electing Members to serve, in the room of others, who died during that period.—Charles II. in his speech from the throne on the 5th of February, acquaints the Parliament, "That he had given orders for this purpose, to the end, that the House might be full at their meeting; and I am mistaken," he adds, "if this be not done according to former precedents; but I desire, that you fall not to any other business, till you have examined this particular, and I doubt not but precedents will justify what is done.—I am as careful of all your privileges, as of my own prerogative." The Commons, immediately on their return from the House of Lords, adopt that part of his Majesty's recommendation, to make this matter the first object of their consideration; but, when it is proposed to appoint a Committee, to inspect the

"say it, yet I must needs confess, lost it is, and so farewell it."—Parliamentary History, Vol. IV. p. 497.—On the 24th of April, 1606, the numbers being equal, Mr. Speaker's voice cast it. So on the 14th of July, 1610.—In the House of Lords the Speaker gives his voice, as every other Lord of Parliament does, and if the votes are equal "*Semper presumitur pro negante*," as, in the Journals of the 4th and 5th of April, 1689, is declared to be the ancient rule in the like cases. See in the Lords Journal

of the 21st of June, 1701, a curious difficulty that arose, upon an equality of voices and proxies, it being said "That the Lord Dudley, whose proxy had been used, was dead."

\* In an extract from a manuscript of Lord Keeper Guildford's, published by Sir John Dalrymple, in his Appendix to the Memoirs of Great Britain and Ireland, p. 90, is this passage, "Shaftsbury issued writs for elections, without the Speaker's leave, to bring in a few of his own creatures to be Burgesses in the West country."

precedents touching elections and returns, the House reject this mode of proceeding, and after debating the matter at large \*, and “ the general sense and opinion of the House being, That during “ the continuance of the High Court of Parliament, the right and “ power of issuing writs for electing Members to serve in this “ House, in such places as are vacant, is in this House †; who “ are the proper judges also of elections and returns of their “ Members:” The House on the 6th of February, 1672, resolve, “ That the Speaker do issue his warrants, to the Clerk of “ the Crown, for superseding all the writs for the election of “ Members, that were not executed before the first day of this “ Session; and that all elections upon writs issued since the last “ Session are void, and that Mr. Speaker do make out his warrants “ for issuing writs for those places.”—The exercise of this power of issuing warrants by the Speaker, for the making out new writs, was solely by virtue of the authority of an order of the House of Commons, until, by the statute of the 10th of George III. ch. 41, he was enabled, during a recess, without such order, under particular limitations and restrictions, to issue his warrants in the room of Members deceased. And by the statute 15th George III. ch. 36, this power was further extended to the case of vacancies, arising from Members of the House of Commons becoming Peers of Great Britain ‡.

When the House order any Member, or other person, to be re-

\* See this debate in the 2d volume of Grey's Debates, page 2, particularly, how much Mr. Attorney General Finch laboured to support this new claim of the Crown.

† See Serjeant Glanville's report upon this right, and upon the nature of the issuing such writs from the Court of Chancery. Glanville's Report of Election Cases, p. 85.

‡ Both these Acts were repealed by the statute 24th George III. ch. 26, and other provisions enacted for these purposes, and the Speaker is, by that Act, authorized and directed to appoint certain deputies, for the execution of this part of his duty, in case of his death, or of his seat being vacated, or of his absence out of the realm.

primanded, or thanked, it is the Speaker's duty \* to execute the commands of the House; and the speech, which he makes on these occasions, is frequently ordered to be printed—and in that case is entered in the Journals †.

Though it is a standing order, that the Speaker shall not at any time adjourn the House without a question, it is a more ancient rule of the House, that forty Members ought to be present on the decision of every question; and therefore, as we have seen before, when it appears that forty Members are not present, the practice of the House has been, for the Speaker, if it is past four o'clock, to adjourn the House from his own authority, "without any question," and it is so expressly stated in the entries in the Journal.

\* See the 22d of April, 1671; and 21st of March, 1709; 27th of May, 1725; 16th of May, 1768; and Mr. Addington's speech 20th of June 1794, on giving the thanks of the House to the Managers of Mr. Hastings's impeachment.

† See the instances of the 19th of March, 1700; the 21st of November, 1702; the 26th of April 1711; the 8th of May, 1721; the 27th of May, 1725; the 8th of December,

1763, of the thanks given to Mr. Alderman Harley; and of Sir John Eyles reprimanded in his place on the 31st of March, 1732; and Sir J. Cust's speech on the 10th of February, 1768, on reprimanding the Mayor and several of the Aldermen of Oxford; and the speech of Mr. Addington on the 28th of May, 1790, on reprimanding Major Scott. —There are several other cases in the Journals.

## S P E A K E R.

V. *His Rank.*

**B**Y the 1st of William and Mary, chap. the 21st, intituled; “ An Act for enabling the Lords Commissioners for the Great Seal to execute the office of Lord Chancellor, or Lord Keeper,” it is enacted, “ That the said Commissioners, not being Peers, shall have and take place next after the Peers of this realm, and \* Speaker of the House of Commons.”

\* Ever since this Parliamentary declaration (though before it has been sometimes otherwise, by mistake) the Speaker of the House of Commons has constantly taken place next to Peers of Great Britain, both in and out of Parliament time.—In all public commissions he is so ranked; and has the precedence at the Council-table, as a Privy Counsellor. And although on common occasions, and by practice at the Council Board, and in Commissions of the Peace, and in some other Commissions, the Speaker gives place to Irish Peers, and whoever else, by courtesy, takes place before some Peers of the realm, as sons of Dukes and Marquisses; yet in all commissions by Act of Parliament he is named before these; and so ought to be on all solemn and national matters; as Mr. Smith, the Speaker, was in the commission about the Union of the two kingdoms; in which he was named immediately after the Peers who were in the commission, and before the Marquisses of Hartington and Granby, and signed the treaty before them.—This commission was issued, and the articles signed, during the prorogation of the then Parliament; which shews, that the

Speaker's precedence is not confined to the time of the sitting of Parliament. Mr. O.—See the signature to the Articles of Union, in the Commons Journal of the 28th of January, 1706, where the Speaker signs the next after Lord Somers, and the first of the Commons; immediately before the Lords Hartington and Granby.

During the sitting of Parliament, and adjournments of it, the Speaker has the keeping of the Mace, and is to be attended with it, and ought never to appear on any public occasion without it; and then always in his gown. Mr. O.—See the opinion of the House on this subject, in the Journal of the 7th of May, 1668.

When the House are at the trial of a person impeached, as a Committee of the House, the Speaker is placed in a box, in the middle of the front row of the benches allotted for the Members, and has his gown on. Neither he, nor the Members, sit covered, because they are a Committee only; an expedient established at the trial of Lord Strafford, to prevent disputes between the two Houses, about being, or not being, covered. Mr. O.

C L E R K.

## C L E R K.

- I. *His Appointment, and the Officers under him.*  
 II. *His Duty.*
- 

I. *His Appointment, and the Officers under him.*

1. **O**N the 7th of May, 1604, the Clerk being ill, desires leave, by letter to the Speaker, to appoint a Deputy to supply his place; which was done by one Cadwallader Tydder, an ancient Clerk, that had been servant to Mr. Onflow, the former Clerk of this House, and had once or twice supplied the place in his time\*.

\* On Monday, February the 19th, 1620, the Clerk being sick, his son is admitted to sit in his place; and it was ordered, but it was not observed, that one *Lawyer* one day, and another another day, shall sit in the low Chair by him, with his hat on his head, and to have his voice, and speak, and have the same privilege as any other Member of the House; only he shall sit there to assist the young Clerk in his father's illness.—*Parliamentary Debates, 1620-1, Vol. I. p. 59.*—Since the former publication of this Work, I have been favoured by a Friend, with the following extract from a manuscript in the Inner Temple library by Petyt, intituled, “*Journal or Diarie of the most material passages in the Lower House of Parliament summoned to be holden the 16th day of January,*

“*A. D. 1620, but by prorogation adjourned till the 23d, and then again to the 30th of the same month.*”

“*Monday, the 19th of February, 1620.*

“*The Clerk of the Parliament being sick, it was moved, Whether he might not have a deputy? Some said yea, and gave this reason, because he had it by patent to him and his deputy.—Therefore it was agreed, that his son should supply his father's place, during his sickness; and he took the oath of supremacy, being administered by Sir Thomas Edmonds.*”—*This Sir Thomas Edmonds was Member for Dorchester and Treasurer of the Household.*

*The minutes taken by the son, during the father's illness, from the 19th to the 26th of February, are not inserted in the Journal.*

2. On the 25th of April, 1640, resolved, upon question, That Mr. John Rushworth shall be admitted as a Clerk Assistant in this House, at the request of the Clerk himself.

3. On the 25th of April, 1660, William Jeffop, Esquire, is chosen by the House of Commons in the Convention Parliament, to be their Clerk, and Ralph Darnall, Esquire, to be Clerk Assistant.—This was immediately before the King's return. Afterwards, on the 11th of September, 1660, it is resolved, "That William Jeffop, Esquire, be humbly recommended by the House to the King, to be Clerk of this House; and that his Majesty will be pleased to grant the said office of Clerk of the Commons House of Parliament, to the said William Jeffop for life, by letters patent under the Great Seal of England, with all such fees, salaries, and allowances, as have heretofore been granted to any Clerk of the Commons House of Parliament." On the 13th of September, Mr. Annesley reports his Majesty's consent; and on the 27th of December a message is sent to the Lord Chancellor, to hasten the passing of the patent.

4. On the 22d of January, 1688, on the meeting of the Convention Parliament, Paul Joddrell, Esquire, is appointed Clerk, and Samuel Gwillym, Esquire, Clerk Assistant: And on the 6th of March following, Mr. Gwillym desires to quit the service of the House; which the House agree to.

5. On the 25th of March, 1698, ordered, \* That the Clerk of the Crown do attend this House, 'in his place,' to-morrow morning.

6. On

\* The Clerk of the Crown is an officer of the House of Commons, and his place is upon the steps, at the Speaker's feet, where

he may sit, and be present at debates.—When the Clerk of the Crown is a Member, as Mr. Bisse was, and Mr. Yorke is, the orders

6. On the 28th of March, 1726, \* Mr. Joddrell, by reason of his age and infirmities, desires that Mr. Aiskew may be permitted to assist at the Table; accordingly Mr. Stables, who was Clerk Assistant, by Mr. Speaker's direction, took the Clerk's chair, and Mr. Aiskew was called in.

7. On the 20th of January, 1725, Mr. Aiskew had before officiated at the Table, during an illness of Mr. Stables, the Clerk Assistant.—On the 1st of February, 1727, Mr. Aiskew, then Clerk Assistant, is indisposed, and another person is proposed by the Clerk, to assist him in the mean time. So on the 25th of February, 1729, and frequently afterwards.

8. On the 10th of February, 1747, the Speaker acquaints the House with a letter he had received from Nicholas Hardinge, Esquire, Clerk, in which he informs him, that he had resigned the office; Mr. Speaker also acquaints the House, that his Majesty will in a few days appoint another person to succeed Mr. Hardinge; and on the 15th of February, Mr. Dyson being appointed, is called in, and takes his seat at the Table.

orders are then made on his Deputy. Mr. O. —“ Albeit writs of summons for the Parliament issue out of the Chancery, and are returned into the Crown office of that Court, and there kept; yet the House of Commons in Parliament, is a distinct Court of Record of itself; and the going forth of the writs from the Chancery, is only as writs go forth from thence, returnable into any other court or place—and the Clerk of the Crown in Chancery, hath but the custody of the writs and returns, as for, and to the use of the Commons in Parliament; and as records belonging to the House of Commons; and he is their officer, and attendant upon the House to this special purpose.” Glanville's Re-

ports of Cases of Election, p. 85.—See in the Journal of the 10th of May, 1728, the difference of proceeding, respecting the attendance of the Clerk of the Crown, and the Messenger of the Great Seal.

\* Before this, on the 15th of December, 1694, when Mr. Cole, one of the Clerks without, attended to assist in the House during Mr. Joddrell's illness—Mr. O. says—In this case the Standing Clerk Assistant sits in the chair of the principal Clerk, and the occasional Clerk sits on the stool. But, if the principal Clerk makes a Deputy in form (as he may do by his patent) I conceive that the Deputy must sit in the chair of the Principal. Mr. O.



9. On the 13th of November, 1755, the Speaker acquaints the House, that Mr. Dyson desired to be absent, on account of the indisposition of a near relation. Mr. Poyntz is ordered to attend at the Table during his absence.

10. On the 20th of December, 1759, the Speaker acquaints the House, that the Clerk, and Clerk Assistant, are so much indisposed, as not to be able to attend their duty; Mr. Yeates is ordered to attend in their absence.

11. On the 28th of March, 1764, the Clerk Assistant desires to be absent for a few days, upon particular business \*; on the 29th, Mr. White is to attend in his absence.

## O B S E R V A T I O N S.

The office of Clerk of the House of Commons, or, as it is sometimes called, "Clerk of the Commons House of Parliament," or, perhaps still more properly, as it is stiled in the patent, "Under Clerk of the Parliaments, to attend upon the Commons," is an office granted by the King †, for life, by letters patent, to be exercised by himself or Deputy, with an ancient salary of 10*l.* payable half yearly at the Exchequer. Before the Clerk enters  
upon

\* This leave of absence was to permit me to attend the election of a High Steward for the University of Cambridge, in a great contest between the Earls of Hardwicke and Sandwich.

† In Grey's Debates, Vol. VI. p. 206, is the following entry:

"Complaint was made by several Mem-

bers of the Clerk's non-entry of the enquiries yesterday, concerning money issued out by Privy Seals; and that he deserved to be turned out of his place, for his misdemeanour.

The Speaker.] You meddle with what you have nothing to do with, in displacing the Clerk, he being a Patent Officer.

Mr.

upon his offices, he takes the following oath, kneeling upon his knees, before the Lord Chancellor ; which oath is administered by the Clerk of the Crown ;

“ Ye shall be true and faithful, and troth you shall bear to our Sovereign Lord George the Third, by the Grace of God, King of Great Britain, France, and Ireland, and to his heirs and successors ; ye shall nothing know, that shall be prejudicial to his Highness his crown, estate, and dignity royal, but that you shall resist it to your power, and with all speed ye shall advertise his Grace thereof, or at least some of his Council, in such wise as the same may come to his knowledge. Ye shall also well and truly serve his Highness, in the office of Under Clerk of his Parliaments, to attend upon the Commons of this realm of Great Britain, making true entries, remembrances, and journals of the things done and past in the same. Ye shall keep secret all such matters as shall be treated in his said Parliaments ; and not disclose the same before they shall be published, but to such as it ought to be disclosed unto. And generally ye shall well and truly do and execute all things belonging to you to be done, appertaining to the said office of Under Clerk of the Parliaments, As God you help, an by the contents of this book \*.”

By virtue of his office, the Clerk has not only the right of appointing a deputy to officiate in his stead †, but has the nomination

Mr. Hampden.] The Clerk Assistant is your own Officer, and you may put him out, and displace him, upon misdemeanour.

This allegation against the Clerk, of the not entering yesterday's order perfectly, was passed over, with some reflection on the Clerk ; and he was ordered to perfect the Journal.”

\* Compare this oath, with the oath taken by the Clerk of the House of Lords, in the House of Lords, in the Journal of the 21st of March, 1620.

† See his Letters Patent, and D'Ewes's Journal, p. 431. On the 12th of March, 1620, Mr. Bowyer, Clerk of the Parliaments, being ill, the Lord Chancellor informed

tion of the Clerk Assistant and all the other Clerks without doors \*. Formerly the appointment to these offices made a considerable part of the Clerk's income, as it was the usual practice to sell them; but, when Mr. Dyson came to the office of Clerk, though he had purchased this of Mr. Hardinge, for no less a sum than six thousand pounds, he, with a generosity peculiar to himself, and from a regard to the House of Commons, that the several Under Clerkships might be more properly filled, than they probably would be if they were sold to the highest bidder, first refused this advantage; and appointed all the Clerks, whose offices became vacant in his time, without any pecuniary consideration whatever. I was the first that experienced the effect of this generosity, as Clerk Assistant; to which office I was appointed by Mr. Dyson †, not only without any gratuity on my part, but indeed without his having any personal knowledge of me, till I was introduced to him by Dr. Akenfide; and recommended by him, as a person that might be proper to succeed Mr. Reid, then just dead, as Clerk Assistant. This office, at the time I received it from Mr. Dyson, 'gratis,' he might have disposed of, and not to an improper person, or one unacquainted with the business of the House of Commons, for 3000 l.—Mr. Dyson's successors, i. e. Mr. Tyrwhitt and myself, have thought ourselves obliged to follow the example which he set; but it is one thing to be the first to re-

formed the House, that Mr. Bowyer desired, that he might make Henry Elsyng his Deputy, who had also a patent of the Clerk's place in reversion;—to which request the Lords agreed.

\* See, in the Lords Journals of 21st of January, 1723, a Petition from James Merest, Reading Clerk, complaining to the House of his having been removed from his office by William Cowper, Esquire, the Clerk. On the 31st of January this Petition is withdrawn.—See also the 6th of February, 1723, the Petition of Charles Reynell, and the or-

der of the House of Lords, "That the Clerks  
" and inferior officers, attending this House,  
" shall not be, at any time, suspended or dis-  
" placed from their offices or employments,  
" without leave of the House." On the  
10th of February this is declared to be a  
standing order of the House, and to be en-  
tered on the Roll.—And see farther touch-  
this dispute, between Mr. Cowper and Mr.  
Reynell, 25th of January, and 18th of Fe-  
bruary, 1725, and the 9th and 13th of May,  
1726.

† On the 10th of May, 1760.

fuse a considerable and legal profit, and another, not to resume a practice, that has been so honourably abolished by a predecessor.

The first Clerk that appears upon the Journal, is 'Seymour,' who was Clerk in the reign of Edward VI. and from whom the Journal of that reign, and to the 9th year of the reign of Queen Elizabeth, takes its name, and is called "Seymour." It should seem, from the report which is entered in the Journal on the 31st of May, 1742, that this Gentleman continued to be Clerk till the year 1571, when he was succeeded, by 'Mr. Fulk Onflow \*,' from whom the second Journal, beginning the 2d of April in the 13th year of Queen Elizabeth, and ending the 17th. of March in the 23d year of her reign, is called after his name, "Onflow." It appears from D'Ewes's Journal, that on the 11th of February, 1588, Mr. Speaker moved the House in behalf of Mr. Fulk Onflow, the Clerk, "that having of late been sick, " and still weak, and enjoying his office by letters patent of the " grant of her Majesty, to exercise the same by himself, and his " sufficient deputy or deputies, it might please the House, in his " absence, (if he shall happen, in regard of his health and necessary ease, sometimes to withdraw himself from the exercise of " his office in this House, in his own person) to accept therein " the attendance and service of some of his own Clerks or servants ;" which was so granted and assented to by the whole House accordingly. Before this, on the 15th of February, 1586 †,

\* This Mr. Fulk Onflow was elder brother to Mr. Richard Onflow, who was chosen Speaker in 1566; and it is said in the Commons Journal of the 16th of January, 1580, that Mr. Fulk Onflow was Clerk, sitting in his place at the table, at the time of his brother's election.—Yet Sir Symonds D'Ewes says, p. 119 and 122, "That Seymour continued to act, as Clerk, through-

" out this Parliament of 1566." The only way of reconciling this difference is, by supposing, that Mr. Fulk Onflow in 1566 acted as Clerk Assistant to Seymour, and that he succeeded to the office of Clerk, in 1571.—Mr. F. Onflow died on the 8th of August, 1602.

† See D'Ewes's Journal, p. 407.

Mr. Serjeant Puckering, then Speaker, informed the House, that  
 “ Mr. Fulk Onslow, their Clerk, being then so weakened by  
 “ sickness, that he could not at present exercise his place, had  
 “ appointed Mr. William Onslow, his kinsman, ‘ a Member of  
 “ this House,’ here present, to supply it; and therefore asked  
 “ their allowance; which they willingly granted.” It appears  
 from D’Ewes \*, that this Mr. William Onslow, ‘ the Member,’  
 was extremely negligent, or inexperienced in the duty of the  
 office; so that when Mr. Fulk Onslow, the Clerk, found himself  
 again unable to attend, instead of desiring the assistance of his  
 kinsman, he availed himself of the leave of the House, granted on  
 the 11th of February, 1588, and on the 3d of November, 1601,  
 appointed Cadwallader Tydder, his servant, to execute the place in  
 his absence, as Deputy, until he should recover his health †. From  
 hence it appears, that Mr. Fulk Onslow continued in the office of  
 Clerk from the year 1571, throughout the remainder of the reign  
 of Queen Elizabeth.

On the meeting of the first Parliament of James I. on the 19th  
 of March, 1603, Ralph Ewens, Esquire, is named in the Jour-  
 nal, as attending the Lord Steward, as Clerk of the House of  
 Commons. How long Mr. Ewens ‡ enjoyed that office, or who  
 was Clerk during the remainder of the reign of James I. or in the  
 four first Parliaments of Charles I. I don’t know; but it appears  
 from an entry in the Journal of the 27th of December, 1660,

\* See D’Ewes’s Journal, p. 413, 414,  
 415, 416.

† See D’Ewes’s Journal, p. 623.

‡ Mr. Ewens probably died in 1614, as  
 upon the 20th of May in that year, Sir Tho-  
 mas Rowe moveth, “ That, Mr. Wilfon be-  
 “ ing thought to have many of the books  
 “ and papers, *belonging to this House*, which

“ came to the Lord Treasurer’s hand *by Mr.*  
 “ *Ewens’s Will*, he may be directed, by the  
 “ Committee of Privileges, to bring to  
 “ them, what he hath, and to discover what  
 “ he knoweth about them;” which is or-  
 dered accordingly. — Mr. Ewens appears  
 from the Lords Journal to have been living  
 on the 30th of October, 1610.

that Mr. Elfyng was Clerk during the first years of the Long Parliament, and that 'he deserted that service' in 1648, on the death of the King. The writer of his life, in the *Biographia Britannica*, says, "that Archbishop Laud procured him this office; "and that he proved of infinite use, as well as a singular ornament to that House of Commons \*."—It seems from the Journal of

• The following excellent character of Elfyng is to be found in the 2d volume of Wood's *Athenæ Oxonienses*, p. 177.

"Having taken one degree in arts, he afterwards spent more than seven years in travelling through various countries beyond the seas; whereby he became so accomplished, that, at his last return, his company and conversation was not only desired by many of the Nobility, but Clergy also: and was so highly valued by Dr. Laud, Archbishop of Canterbury, that he procured him the place of Clerk of the House of Commons. This crowned his former labours, and by it he had opportunity given to manifest his rare abilities; which in short time became so conspicuous, especially in taking and expressing the sense of the House, that none, as it 'twas believed, that ever sat there, exceeded him.—He was also so great a help to the Speaker and the House, in helping to state the questions, and to draw up the orders free from exceptions, that it much conduced to the dispatch of business, and the service of the Parliament. His discretion also, and prudence, was such, that though faction kept that fatal, commonly called the Long, Parliament in continual storm and disorder, yet his fair and temperate carriage made him commended and esteemed by all parties, how furious and opposite to ever they were among themselves. And therefore it was, that, for these his abilities and prudence, more reverence was paid to his Stool, than to the

Speaker's (Lenthall's) Chair; who, being obnoxious, timorous, and interested, was often much confused in collecting the sense of the House, and drawing the debates into a fair question; in which Mr. Elfyng was always observed to be so ready and just, that generally the House acquiesced in what he did of that nature. At length, when he saw that the greater part of the House were imprisoned and secluded; and that the remainder would bring the King to a trial for his life, he desired to quit his place, on the 26th of December, 1648, by reason, as he alledged, of his indisposition; but most men understood the reason to be; because he would have no hand in the business against the King.—He was a man of very great parts, and was very learned, especially in the Latin, French, and Italian languages. He was beloved of all sober men, and the learned Selden had a fondness for him. He retired to his house at Hounslow, and died about the middle of August, 1654, in the 56th year of his age. He left behind him certain tracts and memorials of his own writing, but so imperfect, that his Executor would by no means have them published, lest they should prove injurious to his worth and memory."

He was son to Henry Elfyng, Clerk of the House of Lords, who published "The manner of holding parliaments in England," and who died while his son was on his travels.

of the 26th of December, 1648, that Mr. Elfyng appointed a Mr. Phelpes, his Deputy ; for there is an entry, " Resolved, that " this House doth approve of Mr. Phelpes to officiate here, he " ' procuring a deputation from Mr. Elfyng." On the 1st of January, Mr. Elfyng writes a letter to the House, in which he leaves the disposal of his office to the House ; but the House, instead of accepting of his resignation, resolve, " That Mr. Phelpes " be, and is hereby appointed Clerk Assistant to Henry Elfyng, " Esquire, Clerk of this House ; and that Mr. Phelpes do sign in " Mr. Elfyng's name : " And a Committee is appointed, " to con- " sider of, and present the names of fit and able persons, that a " sufficient Clerk may be elected out of them, to be Clerk of this " House." On the 5th of January, 1648, just before the King's death, Mr. Elfyng's patent is called in ; and Henry Scoble, Esquire, is nominated and appointed Clerk in his place and stead, and Ralph Darnell, Esquire, is appointed Clerk Assistant. On the next day, Mr. Scoble is ordered to attend, and officiate as Clerk ; and a Committee is appointed to prepare a letter, to be signed by Mr. Speaker, and to be sent to Mr. Scoble, for that purpose. On the 30th of August, 1649, on the report from a Committee appointed to consider of the fees and salaries of the Officers of the House, it is ordered, " that 500 l. per annum, together with the office of " ' Clerk of the Parliament ' (there being at this time no House " of Peers) be granted, under the Great Seal, to Henry Scoble, " Esquire, in the usual form, during his life." He had been

A new and very excellent edition of this work was published in 1768, by my predecessor Mr. Tyrwhitt, from a manuscript in the Harleian Collection, in Mr. Elfyng's (the father's) hand writing.

On the 27th of December, 1660, it is resolved, " That towards the present relief " of the children of Henry Elfyng, Esq ; " heretofore Clerk of the Commons House

" of Parliament (who, out of his loyalty and " duty to his Majesty and the public, deserted " ed his said employment in the year 1648, " and is since dead, leaving a very small " provision for his children) there be " charged on the arrears of the Excise, the " sum of five hundred pounds, to be paid, " for the use aforesaid, out of the said " receipt."

appointed to this office, on the abolition of the House of Lords, by an Act of Parliament passed on the 14th of May, 1649. On the 4th of September, 1654, the day of the meeting of the first Parliament called by Cromwell, Mr. Scoble coming into the House of Commons as Clerk, it was excepted to by some Members, that he came in before he was chosen; upon which he withdrew, and after some time was called in again, and acquainted by William Lenthall, Master of the Rolls, as Speaker, "that the House had 'chosen him' to be their Clerk," and it was ordered to be so entered. On the 10th of October, Mr. Darnell is approved of to be Clerk Assistant.—This was the first Parliament called by Cromwell, as Protector. In the Assembly which met on the 5th of July, 1653, Mr. Scoble had been appointed Clerk. Notwithstanding that Mr. Scoble had been so often approved of for this office, and had actually been confirmed in it by Act of parliament for his life—and had besides, as appears from the Journal of the 25th of January, 1657, received a new patent lately, from the Lord Protector, whereby he is made Clerk of the Parliaments for his life—yet the House of Commons, on the 20th of January, 1657, elect John Smythe, Esquire, to be Clerk; and on the 22d, order Mr. Scoble to deliver over the Journals, Books, &c. belonging to the House, to Mr. Smythe; and on the 25th, notwithstanding a representation from Mr. Scoble, they confirm these orders. The reason for this proceeding was, that on this day, the 20th of January, 1657, 'the other House,' first named by Cromwell, in the place of the House of Lords, then met; so that Mr. Scoble was, from his patent, to be considered as Clerk of that House, and not of the House of Commons.—At the meeting of the next Parliament, on the 27th of January, 1658, Mr. Smythe and Mr. Darnell are again appointed by the House, Clerk and Clerk Assistant. After the death of the Protector, on the meeting of the Rump Parliament, Thomas St. Nicholas, Esquire,



is appointed 'Clerk of the Parliament,' and Mr. Darnell, Clerk Assistant, the 13th of May, 1659, and a Bill is ordered for repealing the Act which had settled that office on Mr. Scoble.—On the meeting of the Convention Parliament, the 25th of April, 1660, William Jeffop, Esquire, is chosen by the House to be Clerk, and Mr. Darnell, Clerk Assistant; and it appears from No. 3, that Mr. Jeffop afterwards received a patent from the King. He enjoyed his office for a very short time; for on the meeting of the new Parliament, on the 8th of May, 1661, William Goldsbrough, Esquire, attends as Clerk; and he probably continued till 1684, when, as it is stated in the report of the 31st of May, 1742, Mr. Jodrell succeeded to that office.—Mr. Jodrell remained till the year 1726, when, from his great age, he was obliged to decline attending, having been in possession of the office forty-two years, thirty-eight\* of which, he had sat, as Clerk, at the Table. Mr. Stables must have been appointed soon after, as he appears to have attended as Clerk, on the 15th of June, 1727. Mr. Hardinge's name first appears on the 13th of June, 1734, and he continued till the 10th of February, 1747, when he was succeeded by Mr. Dyson; who quitted the office in August, 1762. Mr. Tyrwhitt succeeded him, on the 18th of August; and I succeeded Mr. Tyrwhitt, on the 3d of June, 1768, on which day my patent is dated.

† The form of appointing the Clerk Assistant is — the Clerk

\* Mr. Jodrell, though his name is not inserted in the Journal, appears from the Minute book, to have officiated as Clerk in the short Parliament called by James the II. which met on the 19th of May, 1685: But as, from the dissolution of that Parliament, which never assembled after the 20th of

November, 1685, there was an interval of Parliaments till the meeting of the Convention Parliament in 1688, I have stated Mr. Jodrell's attendance only from the year 1688 to 1726.

† The Clerk Assistant is called *the Speaker's Clerk*; so Trevor (Speaker) said,

Clerk informs the Speaker, that, with the approbation of the House, he has named such a person to be his Clerk Assistant; the Speaker acquaints the House with this nomination, and that the person so appointed attends at the door: he is then called in, and takes his seat at the table \*.

It should seem † as if Rushworth was the first person appointed to this office, at least I have not met with the name of any person before him; probably the multiplicity of business which the Parliament found themselves engaged in, in 1640, made an additional Clerk necessary.

The Clerk appoints all the other ‡ Clerks without doors, and their Deputies, not by any written or formal appointment, but by his nomination only §.

The

as I have heard; but is appointed by the Clerk.—Mr. O. See in the Lords Journal of the 11th, 16th, and 31st of January, 1753, the proceedings touching the appointment of William De Grey, Esq. (afterwards Lord Chief Justice of the Common Pleas, and Baron Walsingham) to be Clerk Assistant, and afterwards Reading Clerk, in the House of Lords.

\* When I was named to this office, by Mr. Dyson, on the 10th of May, 1760, having come up the House to the table, the Speaker, Mr. Onslow, said to me from the Chair, “The Clerk has appointed you to be his Clerk Assistant; but now you are appointed, you are the Clerk of the House, you are my Clerk;” and then, by his direction, I took my seat at the table.

† Mr. O. says, that Rushworth was not the first Clerk Assistant; for that he had seen a print of the House of Commons, in 1620, in which are two Clerks sitting at the table.—But he adds, “This might be occasional, for, by tradition, Rushworth was the first standing Clerk Assistant.” From the note

in p. 237, it appears that, in the year 1620, there were two seats for Clerks at the table —And see what is said before in the note to p. 243, respecting Mr. Fulk Onslow being Clerk Assistant in 1566.—In a book, containing the Orders of the Parliaments, used in England, (which was presented to the Parliament of Ireland, in 1569, written by Mr. Hooker, who was at that time Member for Athenry in Ireland, and for Tiverton in Devonshire) under the title, “Of the Clerk of the Lower House,” there is the following passage: “There is only one Clerk belonging to this House: his office is to sit next before the Speaker at a table, upon which he writeth and layeth his books.”

*Hist. of the Transactions of the Irish Parliament by Lord Mountmorres, Vol. I. p. 122.*

‡ For the rank of the several Officers of the House of Commons, in processions at the Coronation and other Ceremonies: See the Journal of the 23d of April, 1702.

§ On the 9th of March, 1747, the Lords resolve, “That for the future, when any Officers, belonging to this House,

K k

“are

The reason, why the appointment of the Clerk is sometimes entered in the Journal, at other times not, is from the circumstance of the time at which the event happens: if it is during the sitting of Parliament, as in the case of Mr. Dyson, the transaction is entered in the Journal: if it is during a prorogation or adjournment, as was the case both of Mr. Tyrwhitt and myself, no notice is taken of it.

“ are appointed to their respective offices,  
 “ such appointments should be made by  
 “ warrant under the hand and seal of the  
 “ person having a right to appoint to the  
 “ said offices; and that such appointments

“ be entered in a book, to be kept in the  
 “ office of the Clerk of the Parliaments for  
 “ that purpose.”—But this is not the practice  
 in the House of Commons.

## C L E R K.

II. *His Duty.*

1. **O**N the 17th of April, 1628, the Lords desire the Journal of the House of Commons to be brought to a conference, that they may see the speech of a learned Member, in the 18th year of James the First; to which message the Commons answer, "That there was no resolution of the House, in the case mentioned; and that the entry of the Clerk of particular men's speeches, was without warrant at all times, and in that Parliament, by order of the House, rejected and left."

2. On the 25th of April, 1640, ordered, that Mr. Rushworth, just admitted Clerk Assistant, do not take any notes here, without the precedent directions and command of the House, but only of the Orders and Reports made in this House.

3. On the 1st of December, 1640, the Clerk and his Assistant are to be enjoined, that they suffer no copies to go forth, of any arguments or speech whatsoever.

4. On the 10th of December, 1641, Sir Arthur Haselrig moved the House against the Clerk, for suffering his Journals, or papers committed to his trust, to be taken by Members of the House from the table; the House upon this declared, "That it was a fundamental order of the House, that the Clerk, who is the sworn officer, and intrusted with the entries, and the custody of the records of the House, ought not to suffer any Journal or record to be taken from the table, or out of his custody; and that if he shall hereafter do it, after this warning, that at his peril he shall do it."

5. On the 11th of May, 1664, information being given, that a Bill, that had been referred to a Committee, was much altered by a private hand, without the direction of the Committee; and a Bill reported and ingrossed, much differing from the original Bill which was committed;—A Committee is appointed to examine into this abuse.—The Committee report on the 13th of May, that it had been altered by Mr. Prynn.—Mr. Prynn being heard, and withdrawn, is ordered to be reprimanded, in his place, by the Speaker\*.

6. On the 1st of March, 1676, information being given of a mis-entry made in the Journal, in the year 1672, in prejudice of the privilege of this House; and of an omission of an entry in the Journal of this Session; a Committee is appointed to examine and rectify it, and report it to the House.

7. On the 24th of June, 1685, a clause is inserted in a Bill, for rectifying a mistake committed by a Clerk, in ingrossing a Bill of Supply.

8. On the 31st of May, 1742—See the report from the Committee appointed to consider of printing the Journals, with Mr. Hardinge's account of the state of the Journals in his custody.

9. On the 4th of May, 1780, Resolved, That the papers and accounts presented to this House, be carefully preserved by the Clerk, in whose custody they are intrusted; and that no person be permitted to take the same from the House under any pretence whatever; and if any person shall presume to take any papers or

\* Mr. Speaker acquainted him, " That the House was very sensible of this great mistake, in so ancient and knowing a Member, to break so essential an order of the

" House, as to alter and interline a Bill, after commitment; but the House had considered of his submission, and were content to remit the offence."

accounts from the House, that the said Clerk do forthwith acquaint Mr. Speaker, that the House may be informed thereof \*.

## O B S E R V A T I O N S.

The duty of the Clerk is summed up in a very few words, in the oath which he takes, before he enters on the execution of his office:—"Ye shall make true entries, remembrances, and journals, of the things done and past in the House of Commons." This, which also comprehends his being attentive to the other Clerks under him, that they are exact in making the proper entries of the proceedings of Committees, and in obeying the order of the 18th of April, 1614, for affixing the orders for the meeting of Committees on the door of the House, and in the discharge of their other service to the House, includes the whole of his duty. We see it is 'without warrant,' that he should make minutes of particular men's speeches; and that he ought to confine himself merely to take notes of the orders and proceedings of the House †.

\* See a curious instance on the 3d of November, 1666, where a petition that had been presented, being missing, it is ordered, "That every Member, upon the calling of the House, do give an account, and purge himself concerning the subtracting of Mr. Tayleur's petition."—On the 25th of May, 1786, the House being informed, that a Bill, which had been read 1<sup>o</sup> and 2<sup>o</sup>, was missing, the House gave leave to present another copy of the said Bill.

† There was a very extraordinary advertisement published in the Gazette of the 30th of September, 1710, and signed *Paul Jodrell, Cler. Dom. Com.*; the purport of which was to contradict an account that had

been printed in a pamphlet, of a division in the House of Commons, with the numbers and names of the Members who had voted, upon an amendment sent from the Lords to a Bill passed by the House of Commons, "for enlarging the time for taking the Oath of Abjuration;" which division had taken place upon the 13th of February, 1702.—How Mr. Jodrell was called upon, officially, to set right a mistake in a common pamphlet, upon a subject that had occurred eight years before, and which any other person was equally competent to correct by referring to the Journal of the House of Commons, I don't understand.

These he and the Clerk Assistant both do in their Minute-books at the table ; and from these minutes, the Votes, which are ordered to be printed, are made up 'under the direction of the Speaker.' At the end of the Session, it is the Clerk's office to see that the Journal of that Session is properly made out, and fairly transcribed from the Minute-books, the printed Votes, and the original papers that have been laid before the House ; and this is commonly done during the recess in the summer.

All addresses to the Crown, and Orders of the House of Commons, whether for the attendance of persons, or bringing of papers, &c. must be signed by the Clerk, and this he always does with his own hand ; it is his duty also to sign the Bills which have passed the House of Commons.—But the orders for bringing in Bills ; for the appointment and meeting of Committees ; and the other common orders of the House, are, for the sake of expedition, signed in his name by a Clerk without doors, who is authorized by the Clerk to affix his name to these papers.

As the Clerk ought to take notes of nothing but the Orders and Reports of the House, he is always under some difficulty, when \*  
exception

\* By the ancient rule of the House, words spoken by any Member, which gave offence, were to be taken notice of, and censured, some time of the day in which they were spoke. — See *Lex Parliamentaria*, p. 281. This was the ancient rule ; but of late years, the practice and rule has been, that if any other person speaks between, or any other matter intervenes, before notice is taken of the words which give offence, the words are not to be written down, or the party censured ; and this was observed in the instance of John Howe, Esquire, who in a debate (in the year 1694) reflecting with great bitterness

on the then administration of affairs, with some personal imputations on the King himself, said, " Egone, qui Tarquinium Regem " non tulerim, Sicinium sceram ? " and then moved, that the House might go into a Committee, to consider of the state of the nation. He was seconded by a Member, who spoke two or three sentences on the subject of the motion, and then sat down.—After which, Mr. Charles Montagu (afterwards Lord Halifax) took notice of Mr. Howe's words, which, he said, carried a reflection of the highest nature, and desired that Mr. Howe might explain himself. Upon which,

exception is taken to the words of a Member, as irregular, and the House, or any number of Members, call out to have them taken down : as this call of particular Members, though ever so general, is not properly, indeed cannot be, an Order of the House ; and as the taking down the words at the table, is with a view to ground a censure against the Member who used them, the Clerk ought not to be too ready in judging of the sense of the House, or in complying with this call.

I have looked over all the cases that I can find in the Journals \*, and have consulted Grey's Debates, to see whether I could collect from

which, Sir Christopher Musgrave stood up to order, and said, That, for the security of every Gentleman who speaks, and to prevent mistakes, which must happen, if words were not immediately taken notice of, it was the constant rule and order of the House, " That, " when any Member had spoke between, no " words which had passed before could be " taken notice of, so as to be written down, " in order to a censure." And this the House acquiesced in, and Mr. Montagu did not insist upon his motion.—This account I had from Mr. Salway Winnington; and since this, several instances have happened, in which the words were immediately taken notice of; and it has been declared to be the order of the House, " that any person speaking " between, or other business intervening, " would prevent a censure." Mr. O.—But see on the 16th of February, 1606, the proceedings against Sir Christopher Piggott, Member for Buckinghamshire, for words and reflections cast upon the Scotch, on the 13th,

for which he is committed to the Tower, and expelled, and a new writ ordered in his place. See also the proceedings relating to Mr. Shepherd, on the 15th and 16th of February, 1620,—and a debate upon this subject in Grey's Debates, Vol. III. p. 48, Whether the words, objected to, can be taken down, after another Member has spoke?

\* See the proceedings on the 18th of November, 1766, upon the taking down Mr. Alderman Beckford's words, and the several explanations he made.—Mr. Burke informed the House on the 22d of December, 1788, (at the time he desired the entry of these proceedings might be read from the Journal) that the last explanation, with which the House was satisfied, was not only suggested, but written down by him, and read by Mr. Alderman Beckford, as the Alderman's meaning in using the words which had been objected to.—See also the following instances of words taken down :—

Mr. Lenthall's,	—	12th May, 1660.
Sir John Marsham's,	—	3d September, 1660.
Alderman Fowke's,	—	13th March, 1661.



from them any precise rule for the Clerk to follow upon these occasions; but I cannot find that it is by any express order or authority that he takes down the words. In the case of Mr. Cook, the 18th of November, 1685; of Mr. Manly, the 9th of November, 1696; of Mr. Cæsar, the 19th of December, 1705; the entry in the Journal is in these words, "which were directed by the House," to be set down in writing, at the table," but does not

Sir C. Wheeler's,	—	—	12th November, 1669.
Mr. Goreing's,	—	—	3d May, 1678.
Sir R. Cann's,	—	—	28th October, 1680.
Mr. Cook's,	—	—	18th November, 1685.
Mr. Manly's,	—	—	9th November, 1696.
Mr. Montagu's,	—	—	15th January, 1699.
Sir W. St. Quintin's,	—	—	9th June, 1701.
Mr. Cæsar's,	—	—	19th December, 1705.
Sir W. Wyndham's,	—	—	5th April, 1715.
Mr. Shippen's,	—	—	4th December, 1717.

In the instance of Mr. Dyett, on the 9th of May, 1626, it does not appear that the words objected to were taken down.—The entry is, "Upon some words spoken by Mr. Dyett; the House took offence; and upon a general acclamation, *"to the Bar,"* he was heard to speak for himself; and was then withdrawn." 1. Resolved, upon Question, "Mr. Dyett, by words lately spoken here, hath given just offence to the House." 2. Upon Question, "Mr. Dyett to be sequestered for this offence, from the House, during the pleasure of the House." A similar proceeding for a like offence was had against Mr. Clarke, on the 6th of August, 1625, for which, he was committed to the Serjeant.—See the proceedings upon the words of Mr. Gervaise Holles, on the 26th of April, 1641; and upon the exception which was taken at words spoken by Mr. Waller, reflecting upon Mr. Pym, on the 5th of November, 1641, where Mr. Waller was obliged to acknowledge his offence, both to

the House in general, and to Mr. Pym in particular.—See also in Grey's Debates, Vol. II. p. 66, what passed on words spoken by Sir John Trevor, about the dispensing power; where, it appears, the words were asserted and agreed to, and Sir John Trevor explains.—In the 3d vol. Grey's Debates, p. 125, there was a debate, Whether words, spoken by Sir Thomas Littleton, should be taken down or not.—On the 1st of June, 1678, Sir George Hungerford utters words, upon which there was a great cry "To write them down." Several Members repeated the words, but all differently—at last the Clerk reads the words he had taken down—Sir George Hungerford then makes an apology, and asks pardon of the House.—Grey's Debates, Vol. VI. p. 59.—On the 8th June, 1675, Mr. Pepys's words were taken down, as appears from Grey's Debates, Vol. VI. p. 75; for neither this of Mr. Pepys, nor the former instance of Sir George Hungerford, are taken notice of in the Journal.

express how “those directions of the House” were signified to the Clerk. In the instance of Sir Robert Cann, on the 28th of October, 1680, Mr. Pople says, “The words are to be written down by the Clerk\*.” It appears from Grey’s Debates, Vol. VIII. p. 305, that great exceptions were taken to the words of Mr. Secretary Jenkins, on the 25th of March, 1681, on his refusing to carry up the impeachment of Fitzharris to the Lords; and the words are stated by a Member; but, notwithstanding this, it does not appear that they were actually written down by the Clerk†. Not finding therefore any precise rule, by which it can be collected “what are the directions of the House,” and being of opinion, that the Speaker is the only person from whom the Clerk ought to receive the sense, or directions, or orders of the House; the rule I have laid down to myself, and have observed upon these occasions, has been, to wait for the directions of the Speaker; and not to consider myself as obliged to look upon the call of one Member, or any number of Members, as the directions of the House, unless they are conveyed to me through the usual and only channel by which, in my opinion, the Clerk can receive them‡. I was therefore put under very extraordinary difficulties, when,

\* On the 4th of December, 1717, there is a division in the Committee, upon what the particular words of Mr. Shippen were, which were objected to as disorderly, and ordered to be reported to the House.—On the 3d of June, 1626, Mr. Herbert reports from the Grand Committee, some words used by Mr. More, or words *to that sense and effect*, “That we were born free, and must continue free, if the King would keep his kingdom.” Mr. More heard to explain himself, and then withdrew.—Upon Question, Mr. More to be sent to the Tower.

† Notwithstanding the words are stated by a Member, and there is much debate

upon them, nothing appears upon the subject in the Journal; which shews, they were not taken down at the table.

‡ I have, since the first publication of this Work, found a memorandum amongst my papers, from which it appears, that I collected this to be the rule of the House, from conversations which I had with Mr. Onslow and Mr. Dyson, upon the subject of taking down Alderman Beckford’s words, on the 18th of November, 1766—See in the Lords Journals, 17th of February, 1691, an instance of words of a Peer taken down; and he is brought to the Bar to make his submission.

upon the 16th of February, 1770, exceptions were taken to some expressions, used from the Chair by Sir Fletcher Norton then Speaker; but, notwithstanding the loud and repeated cries of several Members, and that I was often particularly called upon by Mr. Dowdeswell, and many others, to do my duty, and write down the words, I recollected my own rule, and declined writing them down, till I had the consent of the Speaker for so doing: And if the Speaker had not given me that consent, I should have persisted in declining to take them down; and would afterwards have submitted the regularity of my conduct, in this particular, to the House, and received their explanation of the rule, Whether the Clerk is justified in obeying any other orders or directions but what are signified to him by the Speaker \*?

When

\* Since the first publication of this Work, it has been suggested, in contradiction to this doctrine, Whether the Clerk, in this instance, ought to require any authority for taking down the words objected to; or whether he ought not, upon a Member's objecting to the offensive words, and stating them, immediately to write them down? Upon the best reconsideration I have been able to give of this question, I continue of my former opinion, that the *Clerk* ought to do nothing in this case, but by the direction of the *Speaker*.—For, what is the course of the proceeding? A Member speaking, uses words which, in the opinion of another Member, or of several Members, appear to be disorderly, and deserving the censure of the House: The Member is immediately interrupted in the course of his speech; and the Member, who objects, states the words which appear to him to be irregular, and desires that these words may be taken down by the Clerk at the table, i. e. that they may make part of the Minutes; in order that, being so taken down, the House may be in a capacity

to give their judgment upon them, whether they are or are not disorderly: For it is clear, that no question can be moved upon them, nor the sense of the House taken, until the words objected to form part of the Minutes of the House.—Can it then possibly be the duty of the Clerk, to write down upon his Minutes, so that they shall form part of the proceedings of the House, every set of words which any one Member may chuse to object to—and this, without any direction or instruction from the Speaker, who, in every other instance but this, is to the Clerk, and for every other purpose, admitted to be the mouth through which the directions of the House are to be conveyed? The form of proceeding I therefore conceive to be this:—The Member who objects, and desires the words to be taken down, must repeat the words he objects to, and state them exactly as he conceives them to have been spoken; the *Speaker* then may direct the Clerk to take them down: But if he sees the objection to be a trivial one, and thinks that there is no foundation for their being thought disorderly,

When the House resolves itself into a Committee of the whole House, where the Chairman takes the chair of the Clerk, it has been always the practice for the Clerk Assistant alone, and not the Clerk, to officiate in this Committee; and from this circumstance it arises, that the office of Clerk Assistant is much the most laborious of the two; as the principal business of the House of Commons, particularly all enquiries into matters of trade, the state of any of the colonies, or of the East India Company, &c. &c. is generally carried on in Committees; and it is the duty of the Clerk Assistant to make out the reports from these Committees, and from Committees of the whole House on Bills.—The Clerk has properly nothing to do in the House, but whilst the House is sitting, with the Speaker in the Chair.

There is a particular Clerk appointed to attend the Committee of Privileges; and, as the Committee of Privileges and Elections

orderly, he will prudently delay giving any such directions, in order not *unnecessarily* to interrupt the proceedings of the House. If however the call to take down the words is pretty general, the Speaker will certainly order the Clerk to take them down, in the form and manner of expression as they are stated by the Member who makes the objection to them. They are then part of the Minutes in the Clerk's book; and when read to the Member who was speaking, he may deny that those were the words he spoke; and if he does, the House, as in Mr. Shippen's case, must decide by a question, Whether they were the words or not? If he does not deny that he spoke those words, or, when the House have themselves determined what the words were, then the Member may either justify them, or explain the sense in which he used them, so as to remove the objection of their being disorderly; or he may

make an apology for them. If his justification, or explanation, or apology, is thought sufficient by the House, no further proceeding is necessary. But if any two Members still think it necessary to state a question, so as to take the sense of the House upon the words, the Member must withdraw before that question is stated, and then the sense of the House must be taken.

It is said in Macaulay's History of England, Vol. II. p. 53, "That on the 2d of March, in the year, 1628, the Clerk refused to read the remonstrance offered by Sir J. Eliot, *though commanded by the House.*" The House can make no order, nor give any command, but through the mouth of their Speaker; and therefore (however much Sir John Finch, the Speaker, was to blame) the Clerk acted very properly upon that occasion.

was formerly the same, the Clerk of the Committee of Privileges is now directed to attend the select Committees of Elections ; and when two or more of these select Committees are sitting at the same time, the Clerk of the House appoints other Clerks to attend these, as Deputies to the Clerk of the select Committees.

There are also four principal Clerks without doors, appointed to attend Committees, who take their attendance by rotation ; each of these four has a Deputy to assist him. There are also two Clerks who have the direction of the Ingrossing Office, and have writing Clerks under them, for the Ingrossing of Bills.

Besides these, there is a Clerk appointed expressly to collect the fees, and to distribute them to the Speaker, and to the Officers of the House \* ; another Clerk, who has the custody of the Journals and papers, and who has several writing Clerks under him. The office of the Clerk of the papers, was formerly kept in the room, which was anciently the Court of Wards ; from whence it has happened, that though this office has been frequently removed from place to place, the chamber in which it has been held, has been always, improperly, stiled, The Court of Wards.

\* This distribution is usually made at the close of each session.

## F E E S,

1. **O**N the 3d of May, 1604, a Bill for the establishment of certain lands, called Affart Lands, in the possessors and owners thereof, pays fees to Mr. Speaker's servant.

2. On the 27th of June, 1607, a motion is made, that a Bill for amending of highways in Suffex, Surrey and Kent, might have expedition; Mr. Speaker 'answereth,' and informeth the House, that it was followed and pressed as a 'public' Bill, but was indeed, 'by all former precedents, to be accounted and taken as a 'private' Bill, being 'only' for three Shires; that no fees were paid for it to the Officers, nor any man took care to answer them; whereupon the House ordered, that ordinary duties should be performed, or else there should be no further proceeding in the Bill.

3. On the 14th of May, 1610, Sir Henry Poole reporteth the allowance agreed on by the Committee for messengers; viz. twenty shillings to the Serjeant for summons for every man, and twelve pence a mile, coming and going, for the messengers: which, after much dispute, was agreed to by the House.

4. On the 11th of July, 1625, a warrant for Mr. Wood, to answer his contempt to the House, in not paying fees for his Bill, to the Speaker, Serjeant, &c.

5. On the 19th of December, 1640, it was declared by the House, upon Mr. Speaker's acquainting the House with the matter,

ter, that the Bill, concerning the fourteen parishes, is a private Bill.

6. On the 15th of August, 1660, the High Sheriff of Cornwall, being lately in custody of the Serjeant, and going privately out of town, without taking out his order of discharge, or paying his fees, is ordered to be again taken into custody, and safely kept till he shall pay his fees.

7. On the 17th of December, 1660, complaint being made, that the Serjeant had demanded excessive fees for the imprisonment of 'Mr. Milton;' it is referred to the Committee of Privileges, to examine and to determine what is fit to be given to the Serjeant for his fees in this case\*.

8. On the 19th of December, 1661, the House being informed, that divers persons, whose names are inserted in a naturalization Bill, had refused to pay fees; it is ordered, That Mr. Speaker do send for such persons, and all other persons, who shall at any time refuse to pay their fees; and if payment be not thereupon made, to report to the House, that such course may be taken, as shall be thought fitting, for the enforcing thereof. On the 7th of February, this course is, by ordering the names of such persons, as have not paid the dues of the House, to be struck out of the Bill.—And on the 10th of April following, those persons who

\* This Mr. Milton, was *John Milton*; who, on the 16th of June, 1660, was ordered to be taken into custody of the Serjeant, and to be prosecuted by the Attorney-General, for having written, "Pro Populo Anglicano defensio," against *Salmasius*; and another book, in answer to the *Icon Basilike*.—He was ordered to be discharged on the 15th of December following, paying his fees.—It

appears, from the Parliamentary History, Vol. XXIII. p. 54, that the complaint on the 17th of December, against the Serjeant, in favour of Milton, was made by *Andrew Marvel*; and that *Sir Heneage Finch*, afterwards the Lord Chancellor Nottingham, said in this debate, "This *Milton* was Latin Secretary to *Cromwell*, and "deserves hanging."

were ordered to attend the Speaker, to give satisfaction about the fees, refusing to attend, are ordered to attend the House, to answer this refusal and contempt, and the matter objected against them for not paying their fees.—See the 6th of May, 1664; 17th of May, 1689; and 21st of May 1702; where persons refusing to pay fees, their names are ordered to be struck out of the Bill.

9. On the 28th of June, 1689, on a complaint against the Serjeant for taking excessive fees, a Committee is appointed to examine, what fees are due to the Officers of the House. But they make no report.—On the 26th of March, 1690, a table of fees is ordered to be prepared, and presented to the House; which is presented to the House, by Mr. Speaker, on the 23d of April: A Committee is appointed to examine it; but they make no report.—Another Committee is appointed for the same purpose, on the 20th of December, 1695; and another on the 13th of November, 1696; but it does not appear that either of them made any report.—See the 25th of March, 1695, when a table is presented.

10. On the 20th of April, 1698, leave given to pass a naturalization Bill, 'gratis,' in consideration of the services rendered to the public by the person to be naturalized.

11. On the 29th of January, 1699, complaint being made, that the messengers belonging to the House had demanded money of persons summoned by them to attend, 'it is declared,' That no person summoned to attend the House, or Committees, as witnesses, ought to pay any thing for their being so summoned.



12. On the 29th of January, 1699, a Committee is appointed to inspect and settle the fees to be taken by the Officers of the House. Their report was ready, and ordered to be received on the 26th of February, but was not received in this session. On the 26th of February, 1700, a table of fees is laid before the House, by the Clerk, in pursuance of an order of the 15th; this table is referred to a Committee, to inspect and report their opinion upon it; but they never make any report.

13. On the 7th of March, 1699, ordered and declared, that all Bills relating to the poor, be deemed and taken to be public Bills, and pass without paying fees for the same \*

14. On the 4th of April, 1700, complaint being made of an exorbitant and scandalous Bill of Charges delivered by a Solicitor, in respect of a petition presented in the last session of Parliament, highly reflecting, in many articles, upon the honour of the House and its proceedings; the Solicitor is ordered to be taken into custody.

15. On the 4th of April, 1707, resolved, That when any person is ordered to be taken into custody, and shall either abscond from justice, or, having been in custody, shall refuse to pay the

\* This order was made on account of a Bill, then depending in the House of Commons, "for the better employing and relieving the poor in the city of London;" which Bill arose out of a Committee, appointed on the 16th of November preceding, "to consider of ways for better providing for the poor, and setting them to work." The order has never been understood to relate to particular applications, which are frequently made, from corpora-

tions, hundreds, and divisions, for erecting Poor Houses, &c.—these Bills having always paid fees.—On the 22d of April, 1765, a motion is made, in the House of Lords, "That in all applications for Bills, for the better relief and employment of the poor, such application and Bills be deemed of a public nature; and pass without paying any fees." The question being put, it was resolved in the negative.

just fees—in these cases, the order for commitment shall be renewed in the next session of Parliament. And this is declared to be a standing order. See the instances of this order being carried into execution, on the 22d of December, 1711; 22d of April, 1713; 16th of August, 1714; 30th of April, 1715; 24th of January, 1725; 22d of January, 1733; 23d of March, 1738.

16. On the 12th of April, 1709, the House\*, taking into consideration the great losses which have already and will hereafter arise to the Clerk, and other Officers of the House, from the general naturalization Bill, and from the late orders made concerning the passing of private Bills through the House, address the Queen to give them some recompence and encouragement.—See the Queen's answer on the 20th of April†.

17. On the 28th of January, 1731, a Committee is appointed to inspect and settle the fees to be taken by the Officers of the House: on the 22d of February, they report a list of fees, settled according to that of the year 1700, with resolutions, that no Officer do presume to take more.—And these are made standing orders.—On the 5th of March, 1750, this table is referred to the consideration of a Committee, to inspect, and to report their opinion upon it; on the 4th of June, 1751, they report several resolutions, with a paper delivered in by Mr. Dyson, at that time Clerk, relating to the distinctions between public and private Bills, and single and double Bills.—On the 13th of June these resolutions are agreed to.

18. On the 2d of June, 1746, a Committee is appointed to

\* See a similar Address from the House of Lords, on the 18th of April.

resolve, *Nem. Con.* to renew this address to her Majesty.

† On the 2d of June, 1711, the Commons

enquire into the fees taken by the Serjeant and Messengers; on the 16th of June, they report several cases from the Journals, and their resolutions; which see on the 16th and 19th of June, and also on the 13th of June, 1751.

## O B S E R V A T I O N S.

It appears from very early instances, that the Officers of the House of Commons were always intitled to certain fees and perquisites from such persons as were benefited by the passing of 'private Bills.' So long ago as the year 1607, this distinction is made between 'public' and 'private' Bills; and the Speaker says, "That the Bill for amending the highways of three counties, though followed as a 'public Bill,' is, 'by all former precedents,' to be accounted a 'private Bill,' being 'only' for three Shires:" and the House order the ordinary fees to be paid.—In the letters patent, by which the office of Under Clerk of the Parliaments is granted by the King, and which have probably been copied, one from another, ever since the separation of the two Houses \*, there is a grant of ten pounds of lawful money of Great Britain, payable half yearly, at the Exchequer, "together with all other rewards, dues, rights, profits, commodities, advantages, and emoluments whatsoever, to the said office, after what manner soever, or however, now or heretofore, anciently appertaining,

\* This event, in the 1st volume of Parliamentary History, p. 216, is said to have been on the 12th of March, 1332.

“ incident, accustomed, incumbent, or belonging.” It has been the opinion of several Antiquarians, I know it was that of Mr. Onslow, that when the two Houses first separated, and sat in different places, the Under Clerk of the Parliaments went with the Commons ; and he has accordingly from that time, in his appointment, and in several public instruments, been stiled “ Under Clerk of the Parliaments, attending upon the Commons.” What these “ rewards, dues, rights, profits, &c.” were anciently, it is difficult to ascertain ; nor do I know of any thing to lead to this information, earlier than a table of fees, which is entered in the Journal of the 30th of August, 1649, and which is reported from a Committee, appointed on the 15th of February, 1648, to consider what was fit to be allowed to this (at this time) new Officer of the State ; for the House of Lords was abolished a few days before, viz. on the 6th of February. I have searched among the papers in my office, for the table of fees which was laid before the House, by the Speaker, on the 23d of April, 1690 ; but, being referred to a Committee, it fell into the hands of the Clerk attending that Committee, and was never returned to the House.—Mr. Foley, as soon as he was elected Speaker, on the 15th of March, 1694, desired “ That a table of fees of the proceedings of “ the House, might be brought in and settled,” which is accordingly ordered.—It is presented on the 25th of March, and is still preserved in the office.—It differs very little from that table of fees, which was afterwards produced by Mr. Jodrell, on the 26th of February, 1700 ; and it appears, by the report of the Committee, of the 4th of June, 1751, which report was agreed to on the 13th of June, that the table produced by Mr. Jodrell, in 1700, had been in general the rule of demanding and taking fees, ever since that period till 1751. So that from the year 1700, to this day, these rewards, dues, rights, &c. have been fixed and ascertained ;

and, such as they were then established, they now continue to be demanded and taken \*.

There has been at all times some difficulty in settling, between the parties applying for or interested in Bills, and the Officers of the House, what are to be deemed † ‘public’ and what ‘private’ Bills, and which are ‘single’ or which ‘double’ Bills. The House,

\* On the 22d of February, 1725, the House of Lords appoint a Committee, “to examine what fees the Officers of that House have a right to demand, upon Bills or Proceedings in Judicature; and that the said Officers do lay before the Committee, the authority by which they claim such

“fees.” On the 22d of March, Lord Delawar reports the table of fees, with the observations of the Committee.—This table is agreed to by the House, and a printed list of the fees is ordered to be affixed on the doors of the House, and in the offices thereto belonging.

† In the table of fees, inserted in the Journal of the 30th of August, 1649, the distinction is expressed in the following manner:—

	£.	s.	d.
Of every private person taking benefit of any private Act	2	0	0
Of every private person taking benefit of any proviso in any Act, public or private	2	0	0
Of every corporation, town, company, society, shire or place, for a private Act	4	0	0
Of every corporation, town, &c. taking benefit of any proviso in any Bill, public or private	4	0	0

On enquiring what the practice had been, during the time Mr. Onslow was Speaker, in order to form my own judgment, what were *public* and what *private* Bills, I found that the following Bills had paid fees as *private Bills*, or rather, as it is better expressed in the table of the 30th of August, 1649, that private persons, and corporations, &c. had paid fees for the benefit they derived from these Bills, whether in their nature public or private.

In 1731=2.—A Bill for encouraging the trade of the Sugar Colonies:

- for regulating Pilots.
- for recovery of debts in the Plantations.
- to prevent the exportation of hats out of the Plantations.
- to secure the trade of the East Indies.
- to encourage the growth of coffee in the Plantations.

1732=3. — for the free importation, and exportation of diamonds.

- to secure the trade of the Sugar Colonies.

House, in the year 1607, thought that a Bill, "being only for the advantage of three Shires," was a 'private' Bill. The resolutions of the House, formed upon the information of that able and 'disinterested' Officer, Mr. Dyson, with Mr. Onflow in the Chair, endeavour, on the 4th of June, 1751, to clear up this difficulty, with as much precision as words are capable of expressing \*; and I should think this report, with the subsequent practice of the House (which is to be known by referring to the

In 1733-4.—A Bill for encouraging the engraving of historical prints, &c.

1734-5. ——— for vesting printed copies of books, in the authors or purchasers, &c.

1735-6. ——— to make more effectual the laws, for recovery of ecclesiastical dues from Quakers

——— for relief of shipwrecked mariners.

——— for continuing the additional duties on stamped vellum, &c.

——— for building Westminster-bridge.

1737-8. ——— for encouraging the consumption of raw silk, and mohair yarn.

——— to prevent frauds in gold and silver wares.

——— for regulating the cheese trade.

——— for collecting at Genoa, money for relief of shipwrecked mariners..

——— to regulate the importation of Smyrna raisins.

1738-9. ——— to obviate doubts relating to tanned leather.

——— to prevent frauds in gold and silver wares.

——— for liberty to carry sugars from the Colonies, to foreign parts, in British ships.

1740-1. ——— for opening a trade to and from Persia, through Russia.

——— relating to insurance on ships..

1741-2. ——— to prevent counterfeiting of gold and silver lace.

——— for laying an additional duty on foreign cambricks imported.

1743-4. ——— for making provision for the widows and children of the Clergy of the Church of Scotland..

——— to prevent brewers servants stealing barrels.

1744-5.—Westminster-bridge Act paid two double fees, because it contained a grant of public money, and further powers to the Commissioners.

——— for allowing additional bounties on the exportation of British and Irish linens.

1745-6. ——— for regulating pawnbrokers.

——— for securing the duties on foreign-made sail-cloth.

1746-7. ——— for support of maimed seamen.

——— to empower distillers to retail spirits.

\* See similar resolutions, agreed to by the Lords, on the 11th of March, 1756.

precedents in the book kept by the Clerk of the fees) might be sufficient to decide upon every question that can arise. And yet it still happens, that, where an application is made by a large body of merchants, for purposes obviously for the benefit of the community, though attended with their own private advantage, the Officers of the House are, from delicacy, under difficulties in bringing themselves to insist upon what, however, in strictness and justice, is their legal right. The rule, which has been lately followed in disputes of this sort, has been to desire that any two or three Members, even of those who wish most to promote the application, would give themselves the trouble to read the report of the 4th of June, 1751, and would consult the Clerk's book for the practice in similar cases, and, whatever should be the result of their opinion upon this enquiry, that the Officers of the House should acquiesce in that opinion.—This mode of proceeding has always appeared to me to be more liberal, than obstinately to persist in a demand, which, though strictly lawful, must, if refused, trouble the House to give their decision upon every particular case \*.—The time, at which the fees that are payable

\* The doubts, which the resolutions of the House, of the 4th of June, 1751, were meant to explain and decide upon, are very well expressed in the paper delivered in to the Committee by Mr. Dyson—which states,

1. "That where a Bill appeared to be of general utility, although immediately, and in the first instance, calculated for the benefit of a particular person, or body of people, it has of late been sometimes argued, that such Bill was a *public* Bill, and *therefore* not liable to pay any fees.

2. "That where a Bill has been brought into the House *upon motion*, without a previous petition, or in consequence of a report from a Committee of the whole House, it has been sometimes argued, that *the manner*

*of bringing* in such Bill proved it to be a *public* Bill, and *therefore* not liable to pay fees.

"This last method of avoiding the payment of fees has been more particularly practised of late, with regard to the continuance of temporary acts.—Application is made to the Committee, appointed to consider of expiring laws, to insert, in their report of laws fit to be continued, such Acts as, in their own nature, ought to pay fees, and for which fees were originally paid.—Now, as the provisions, made in consequence of such report, are usually inserted in some general Bill, the persons interested in such particular provisions are under no necessity of appearing to solicit, or follow such Bill:

able upon Bills become due, is upon the second reading of the Bill;

so that no demand of fees can be made; and the regular method (and indeed, in such cases, the only remaining one) of enforcing the payment of fees, by objecting to the progress of the Bill, is what the Officers of the House must be very backward to make use of, in relation to matters which have the appearance of being originally taken up by the House itself."—

In the session beginning in November, 1781, an application was made to the House, by petition from the Merchants of Hull, Lancaster, and Liverpool, for an increase of the bounties allowed by the Act of 11th of George III. to ships employed in the Greenland Fisheries. In consequence of this application, a Bill was brought in, and proceeded as far as the third reading, when the Clerk, appointed to collect the fees, suggested that this was a Bill, which ought to pay fees, being for the interest of particular bodies of Merchants. When this was mentioned to the Members serving for those towns, they admitted it to be for the benefit of those Merchants; but said that, at the same time, it was not confined to them; that the Merchants of London, Yarmouth, and every other sea-port, might fit out ships in this trade, and avail themselves of the benefits granted by the Bill: and they therefore doubted, whether their constituents ought to be obliged to pay the fees. Upon this objection, the measure recommended before was adopted; The Speaker desired Mr. F. Montagu and Mr. Ord, together with the Members for Hull, &c. to consult the Clerk's book, and the table of fees, and to give their opinion upon the question; and that the Officers of the House would certainly act in conformity to that opinion. They did so; and finding that the Bill which passed in the 11th year of George III. had paid fees; that it had been applied for by these same Mer-

chants, and that an agent had been employed by them to solicit it, they were clearly of opinion that this Bill ought to pay fees. Upon which the Bill, which was reported from the Committee, on the 7th of February, 1782, and was engrossed, and might have been read a third time, and passed the next day, was, by the Speaker's direction, kept back, and not permitted to be read a third time, till the 19th of March; when, the Merchants having settled this matter amongst themselves, and undertaken to pay the fees, the Bill was passed.—So, when a doubt arose, whether the Bill for reducing into one Act of Parliament the several laws relating to the exportation of wool, which passed the House of Commons on the 19th of May, 1788, was liable to pay fees as a private Bill, the decision of this question was referred to Mr. William Grenville, Mr. Frederick Montagu, and Mr. Hussey, Member for Salisbury.—They heard the Agent for the Bill, on the one part, and Mr. Rosier, the Clerk of the Fees, on the other, and determined unanimously, "That it was a *private* Bill, within the meaning of the Table of Fees."—This was certainly a very *general* law, as the purport and intent of it was only to prevent more effectually the illicit exportation of wool. But the grounds upon which the Officers of the House of Commons maintained their right to fees in this instance, were, 1. That the application to Parliament for this Bill, though it was brought in upon *motion*, and not upon *petition*, was, in consequence of several meetings in the country, specially summoned to consider of the laws already in being for this purpose, and how the manufacturers of wool might obtain an Act to make them more effectual.—2. That the Bill had been prepared by agents, specially employed for this purpose, and who had attended it in its progress through the



Bill \* ; and the Officers of the House have a right to withhold a Bill from being read a second time, until the fees are paid, or some person is answerable for the paying of them.

It has been sometimes proposed, to take away the fees of the Speaker †, Clerk, &c. and to substitute in their place a salary from the public ; the immediate consequence of this operation would be, that the overflowing of private applications, which at present very much interrupt the public business, would overwhelm every thing else, and it would be impossible for the Speaker, or the Officers under him, any longer to attend to any part of their public duty.

the House of Commons, on the part of the manufacturers. — 3. That when the wool-growers had petitioned to be heard by Counsel against the Bill, a motion was made on behalf of the manufacturers, that Counsel might be heard for the Bill ; and Counsel were actually heard in support of the Bill : — From these circumstances the Officers of the House of Commons drew the inference, “ That though it is true, the Bill was of general utility, and affecting every part of the kingdom, yet here was proof, that the manufacturers of wool considered it as calculated for *their particular benefit*.” — And accordingly, the Members, to whom this matter was referred, were of opinion, that it came within the Resolution of the 4th and 13th of June, 1751, which is, “ That every Bill for the *particular interest or benefit* of any person or persons, whether the same be brought in upon petition, or motion, or report from a Committee, or brought from the Lords, has been and ought to be, deemed a *private Bill*, within the meaning of the table of fees.” And fees were accordingly paid for this Bill.

• As is expressed in the last of the reso-

lutions, reported upon this subject on the 4th of June, 1751. And so in the House of Lords, on the 31st of August, 1660, it is ordered, “ That the fees due to the Officers of this House for all private Bills, be paid before the second reading of the said Bills, *according to the ancient custom*.” See also the Lords Journal, 23d of November, 1661, and 5th of April, 1662.

† Since the former publication of this Work, an alteration has been made, by the stat. 30th George III. ch. 10, not by taking away the fees payable to the Speaker, but by directing, That an account should be made of the amount of the fees, so due and received, and also of the allowance of 5 l. per day, which had been customarily paid to the person holding that office ; and that this account should be transmitted to the Exchequer, at the end of every quarter ; and that a sum should be paid, from the Exchequer, to the Speaker for the time being, which, together with the said fees, and the said allowance of 5 l. per day, should make up the sum of 1,500 l. in each quarter, or 6,000 l. per annum.

# K I N G.

- I. *Calls the Parliament.*
- II. *Opens the Session.*
- III. *Adjourns the Parliament.*
- IV. *Prorogues the Parliament.*
- V. *Royal Assent to Bills.*
- VI. *Is not to take Notice of Business depending.*
- VII. *Sends Messages relating to Members.*
- VIII. *Sends Black Rod for the House to attend him.*
- IX. *Dissolves the Parliament.*
- X. *How attended with Addresses.*

## I. *Calls the Parliament.*

1. **I**N the first volume of the Parliamentary History, page 233, it is said, that it appears by the date of the writ of summons to the Parliament, which met on the 29th of March, 1340, that, in case of absolute necessity, a Parliament might be then called within less than forty days \*.

2. In the second volume of the Parliamentary History, page 437, it is said, that the writ of summons to Parliament bore date the 15th of September, 1497, for the Parliament to meet on the 14th of October following.

\* It appears from Vol. V. of Rymer's *Fœdera*, p. 171, That the writ directed to the Archbishop of Canterbury bears date the 21st of February.

3. In the seventh volume of *the Parliamentary History*, page 334, Sir Robert Cotton, in a most excellent speech that he makes before the Council, in the year 1627, says, "If the time of the usual summons to Parliament, reputed to be forty days, be too large for the present necessity, it may be shortened, since it is against no positive law."

## O B S E R V A T I O N S.

This question, Whether, 'by law,' the King could summon a Parliament to meet without forty days notice, is now finally determined by the Act of the 7th and 8th of William III. chap. 25, sect. 1. by which it is enacted, "That when any new Parliament shall be summoned or called, there shall be forty days between 'the teste' and returns of the writs of summons:" in order, not only, as Sir Robert Cotton says, "that there may be one County day after the Sheriff hath received the writ, before the time of sitting," but that sufficient notice may be given throughout every part of the kingdom, and time allowed for the elections, and the coming up of Members to Parliament.—By the 22d article of the Treaty of Union \*, after empowering the Queen to appoint

\* When the Commissioners were discussing this article of the treaty, the Lord Keeper Cowper, on the 11th of July, 1706, proposed on the part of the English, "That her Majesty might, by her royal proclamation, appoint her first Parliament of Great Britain, to meet at such time and place, as her Majesty should think fit, which time should not be less than forty-two days after the date of such proclamation." To this proposition, the Lord

Chancellor of Scotland, in the name of the Commissioners for Scotland, acquainted the English Commissioners, on the 13th of July, "That they did agree," but did propose, "That the time for the meeting of the said Parliament, should not be less than fifty days, after the date of such proclamation." And to this alteration the English Commissioners agreed. *De Foe's History of the Union*, page 191, 192.

the Parliament of Great Britain to meet at such time and place as she should think fit, it is resolved, " That such time shall not " be less than fifty days after the date of her Proclamation to be " issued for that purpose." Those additional ten days were certainly allowed, on account of the distance of some parts of Scotland, from whence the Members were to come up. And from this consideration, on the calling of every subsequent Parliament from that time to the present \*, it is very remarkable, that, though no positive law has been made upon this subject, fifty days have always been allowed between the teste, and return of the writs of summons. So that from this uniform practice without a single exception, and grounded upon the same reason, which first suggested that alteration in the year 1707, it may now be considered as the established law of Parliament, that, upon the summoning of a new Parliament, there ought to be fifty days at the least, between the teste of the writs, and the day on which such writs are made returnable.—Though it is the undoubted prerogative of the Crown to judge of the expediency of calling a Parliament, and to deter-

* Date of the Teste,		Date of the Return.	
26 April -	1708	—	8 July - 1708
27 September	1710	—	25 November 1710
18 August -	1713	—	12 November 1713
17 January -	1714	—	17 March - 1714
14 March -	1721	—	10 May - 1722
10 August -	1727	—	28 November 1727
18 April -	1734	—	13 June - 1734
28 April -	1741	—	25 June - 1741
22 June -	1747	—	13 August - 1747
9 April -	1754	—	31 May - 1754
21 March -	1761	—	19 May - 1761
12 March -	1768	—	10 May - 1768
1 October -	1774	—	29 November 1774
2 September	1780	—	31 October - 1780
26 March -	1784	—	18 May - 1784
12 June -	1790	—	10 August - 1790

mine at what time the writs shall issue \*; yet this prerogative is limited by two Acts of Parliament, (1.) the 16th of Charles II. chap.

\* A notion has been sometimes entertained, that, by virtue of the statutes of the 4th of Edward III. chap. 14, and of the 36th of Edward III. chap. 10, intituled, "A Parliament shall be holden once every year," the King is obliged to call a Parliament once at least in every year; and those persons who maintain this doctrine do not mean, that according to these statutes, a session of Parliament shall be holden every year, but that a new election shall be had; that is, that by the ancient law and constitution of this kingdom, the King ought to hold Parliaments 'elected' annually.

If there is any foundation for putting this construction upon these statutes of Edward III. it is rather remarkable, that in the famous Parliament which was elected in 1620, and in which Sir Edward Coke took so great a part, and of which Mr. Glanville, Mr. Noy, Mr. Crewe, Mr. Hakewill, Sir John Davies, Sir Edwin Sandys, and Sir Robert Phelips, were Members—all men, than whom there never were persons better acquainted with the history of the English constitution, or more anxious to preserve it in its utmost purity—that these great and able men, throughout all the debates of that Parliament, which are very accurately preserved (and have been lately printed) should never, amongst their other spirited endeavours to maintain the rights and privileges of the people, once allude to this doctrine.—On the contrary, though the Parliament of 1620 was called in January, (after an intermission of Parliaments for six years) when an adjournment was proposed, and which took place from June 1621, to the

November following; though much doubt arose about the mode of this adjournment; yet, so far from any idea being entertained of its illegality, or that the Parliament ought to be dissolved, to give an opportunity for the electing of another to meet in the next year, Sir Edward Coke himself drew up the resolution respecting the privileges of the Members during this very long adjournment: And when the Parliament met again in November, and, after sitting some time, adjourned till the February following (before which time the King dissolved them in disgust) so far from the House of Commons supposing, that, by law, and the statutes of Edward III. a dissolution ought to take place, they address the King on the 18th of December \*, "not to *prorogue* them at Christmas, but that he will consider what time will be fittest for their departure" and *re-access*, to perfect those beginnings "which are now in preparation." And not a hint is dropped throughout this very long session, that by the statutes of Edward III. they ought to be dissolved in January, 1621, and that a new Parliament ought to be summoned.

It is as remarkable, that after an intermission of Parliaments for twelve years, when a Parliament was summoned, and met in April, 1640—a Parliament of which all the historians speak in the highest terms, and of which Lord Clarendon says, "It could never be hoped, that more sober and dispassionate men would ever meet together in that place, or fewer who brought ill-purposes with them"—and when a Committee was appointed to consider, amongst

\* See the Address in the second vol. of Parliamentary Debates, 1620-1, page 356.

chap. 1; and (2.) the 6th of William and Mary, chap. 2; both of which reciting, “whereas by the ancient laws and statutes of this  
“ realm,

other things, “of the liberties and privileges of Parliament”—and when that Committee report, on the 24th of April, three heads of grievances, and the fourth, “Lastly, as that which relates unto all, and “is a great cause of all the former grievances—the not *holding* of Parliaments “every year, according to the laws and “statutes of the realm”—the Committee itself, and afterwards the House, lay by this point for the present, and agree not to put it to the question. Afterwards, on the meeting of the Long Parliament, in November, 1640, an Act, commonly called, “The Triennial “Bill,” was passed, which, so far from declaring the law to be, that Parliaments ought to be *elected annually*, ordains, “that, in order “to prevent the inconveniences arising from a “too long intermission of Parliaments, a Parliament should be held *at least every three “years*, though the King should neglect to “call it\*.”—The clauses in this Act, compelling the sending out of writs, without the King’s consent, being, as Lord Clarendon says, “derogatory to Majesty, and letting “the reins too loose to the people,” were repealed by the statute of the 16th of Charles II. ch. 1. but the principle was retained; for this Act also declares, “That the sitting “and holding of Parliaments shall not be “intermitted for above three years.”

Even during the Interregnum, by an Act passed in the year 1656, which is printed in Scobell’s collection, the Protector is advised to call Parliaments *once in three years* at farthest; or oftener, as the affairs of the nation shall require.

In the debates in Parliament in consequence of the very long prorogation in 1676, for above a year—the substance of which are reported in Burnet’s History of his Own Times, and in the 4th volume of Grey’s Debates—though Lord Shaftesbury, and the other leaders of the opposition party, pressed with great earnestness every argument and suggestion that could seem to support the cause they adopted, yet they never proceeded so far as to urge this doctrine, “That the Parliament should be *elected annually*.” What they maintained was, that the Parliament, not having *met and sat within the year*, was virtually dissolved, and its acts were therefore illegal; for that, according to the true construction of the statutes of Edward III. which were cited, a *session of Parliament* ought to be holden once every year.

Add to all this, that, in the Bill of Rights, that new Magna Charta, by which the true and real constitution of this country was settled and established at the Revolution—and in which every grievance, under which the people had suffered during the preceding reigns, was condemned, and the claim of the nation asserted to their undoubted rights and liberties—the claim upon this subject is expressed in the following terms: “And t<sup>h</sup> “for redress of all grievances, and for “amending, strengthening, and preserving “of the laws, Parliaments ought to *meet* “frequently.” This word *frequently*, as a statute in its meaning is very vague, is, by the Act of the 6th of William and Mary, chap. 2. explained in the following

\* See this Act at length, in Scobell’s Collection of Acts, page

“ realm, frequent Parliaments ought to be held,” proceed to enact,  
 “ that from henceforth a Parliament shall be holden once in threc  
 “ years

“ *shall in three years at the farthest, from and*  
 “ after the determination of every Parlia-  
 “ ment, legal writs shall be issued under the  
 “ Great Seal, by direction of the King, for  
 “ calling, assembling, and holding another  
 “ new Parliament.”

From all these sources of history, that is, from the several Acts of Parliament passed in the reigns of Charles I. Charles II. and William and Mary (all expressed in almost the same terms); from the debates and resolutions of the best and most jealous Parliaments, that have sat since the beginning of the last century; from the practice, during a course of above two hundred years; but above all, from the declaration of the Bill of Rights, I should imagine the true intent and meaning of the words used in the statutes of Edward III. might be best explained: For, where the expressions of Acts of Parliament, passed above 400 years ago, are doubtful, nothing can better clear up and settle these doubts, than the opinion of all the wisest and best-informed persons upon the subject, uniformly expressed, as well by their Acts as speeches, from the beginning of the reign of Queen Elizabeth to the present time.

Perhaps the reasons, upon which the statutes of the 4th and 36th of Edward III. were founded, may be traced in an ordinance made some years before (the 5th of Edward II.) and which is to be found amongst the Rolls of Parliament, in the first volume of the printed Rolls, p. 285, and is as follows:  
 “ Pur ceo q moultres Gentz sont delaiez en  
 “ la Court le Roi de leur demande, par  
 “ taunt q la pte allegge q les demaundaentz  
 “ ne devient estre responduz saunz le Roi, et  
 “ auxint moltz de Gentz grevez par les  
 “ Ministres le Roi, encountre droiture, des

“ queles grevaunces home ne purra avoir re-  
 “ coverier sanz commune Parlement, Nous  
 “ ordeinons, Qe le Roi tiegne Parlement une  
 “ foiz p an’, ou deu foiz si mestier soit, &  
 “ ceo en lieu covenable. Et q en meismes  
 “ les Parlementz, soient les pledz, qe sont  
 “ en la dite fourme deslaiez, et les pledz la  
 “ ou les Justices sont en diverses opinions,  
 “ recorder et terminez. Et en meisme la  
 “ manere soient les billes terminez qe liverrez  
 “ serront en Parlement, si avant come lei et  
 “ reson le demaunde.” (For the better un-  
 derstanding of this record, see the 2d chapter  
 of Petyt’s *Jus Parliamentum*, p. 15, for the  
 instances of cases determined in Parliament.)  
 See also Rot. Parl. 28th of Edward III. Vol.  
 II. p. 254, N° 3, and 50th of Edward III.  
 Vol. II. p. 355, N° 186, and the statute of  
 the 14th of Edward III. chapter 5, with Mr.  
 Petyt’s opinion given to the House of Lords,  
 “ how far this statute is still in force,” in the  
 Lords Journal of the 1st of May, 1689.—  
 The ordinance of the 5th of Edward II. was  
 again repeated, almost in the same words, in  
 the 1st of Richard II. Rot. Parl. Vol. III. p.  
 23, N° 95.—See the Bishop of St. David’s  
 speech at the opening of the Parliament of  
 the 2d of Richard II. in the Rot. Parl. Vol.  
 III. p. 32, N° 4.—If the words of these  
 statutes of Edward III. required any further  
 explanation to ascertain their meaning to be,  
 “ That a *Session of Parliament* shall be holden  
 “ every year,” and not “ That there shall be  
 “ an annual election;” that explanation may  
 be found in a Bill which passed both Houses,  
 but to which King William was advised to  
 refuse the Royal assent, on the 14th of March,  
 1692; and in another passed by the House  
 of Lords in 1693, whilst Lord Somers sat  
 there as Keeper of the Great Seal: in both

“ years at the least ;” so that, in obedience to these laws, the Ministers of the Crown are bound to take care, “ that the sitting and holding of Parliaments shall not be intermitted or discontinued above three years at the most.” And it is their duty to give directions, for issuing the writs of summons accordingly.—Notwithstanding this recital of the 16th of Charles II. “ That by the ancient laws of the realm, Parliaments ought to be held often,” yet, when in the same reign, in the year 1680, petitions were set on foot, desiring the King to call a Parliament, the King set out a proclamation against them ; and upon that, a set of counter petitions were promoted by the Court, expressing an abhorrence of all seditious practices, and referring the time of holding the Parliament ‘ wholly ’ to the King\*. As soon, however, as the Parliament met, their first business was to take this matter into consideration ; and on the 27th of October, 1680, the House of Commons resolved, nem. con. “ That it is, and ever hath been, the undoubted right of the subjects of England, to petition the King for the calling and sitting of Parliaments, and redressing of grievances.” And in the course of the session, they proceeded against the Lord Chief Justice North, Sir Francis Wythens, and Sir George Jef-

of which the very same terms are made use of. These Bills, after reciting the statutes of the 4th and 36th years of Edward III. declare and enact, “ That, whereas frequent and new Parliaments tend much to the happy union of the King and people, from henceforth a Parliament shall be holden once every year at the least ; and that no Parliament shall have continuance for longer than three years ; and that, within one year after the determination of every Parliament, writs shall be issued for the calling another.” This shews the sense in which the words of the statutes of the 4th and 36th

of Edward III. (which have been so strangely misconstrued) were understood at that time.—The Bill in 1693, did not pass the House of Commons.—Sir Henry Spelman, under title *Gemotum*, in his Glossary, has the following passage, “ *Wittenagemot*, idem apud Anglo-Saxones fuit, quod apud nos hodie *Parlamentum*—parumque a *Folkmoeto* differebat, nisi quod hoc annum esset, & a certis plerumque causis ; illud ex arduis contingentibus, et legum condendarum gratiâ, ad arbitrium principis indictum.”

\* Burnet’s History, Vol. I. p. 478.



series the Recorder, and others, for having been concerned in discouraging these petitions \*

Though no Parliament can be legally assembled, but by the authority of the Crown, there are two remarkable instances, in the history of this country, of a Parliament being called and sitting, and being acknowledged as such, without having been originally summoned by writs issued by order of the King.—The first was, that of the Convention Parliament, which met on the 25th of April, 1660, and which sat till the 29th of December in that year, and was then dissolved. This Parliament was summoned, by writs issued under the direction of an ordinance, passed on the 16th of March, 1659, by the remainder of that House of Commons, that had been called by Charles the 1st, on the 3d of November, 1640.—The ordinance † was entitled, “ A Bill  
“ for dissolving the Parliament begun and holden at Westminster,  
“ on the 3d of November, 1640, and for the calling and holding  
“ a Parliament at Westminster, on the 25th day of April, 1660.” It was however thought adviseable, afterwards, when the legal government was re-established, to pass an Act of Parliament to remove all disputes concerning the assembling and sitting of this Parliament; and it was accordingly declared and enacted,  
“ That the Parliament begun and holden at Westminster, on the  
“ 3d of November, 1640, is fully dissolved ‡ and determined, and  
“ that

\* See the Journals of the House of Commons, Vol. IX. p. 640, et subseq.—and the 7th vol. of Grey's Debates, p. 369.

† See this ordinance in the Appendix to this volume, N<sup>o</sup> 4.

‡ Notwithstanding this express declaration by Act of Parliament, it appears that doubts were still entertained, Whether the Parliament of 1640 was legally dissolved.—

For, on the 24th of May, 1661, the Judges are ordered to attend the House of Lords, to give their opinion upon this question;—and on the 6th of June, the Judges having attended, and having given an unanimous opinion, “ That the said Parliament begun  
“ on the 3d of November, 1640, is now determined:” the Lords order the Attorney General to prepare a particular Bill, for  
declaring

“ that the Lords and Commons now sitting at Westminster, in  
 “ this present Parliament, are the two Houses of Parliament, to  
 “ all intents, constructions, and purposes whatsoever, notwithstanding  
 “ any want of the King’s writ of summons, or any other defect.”  
 This Bill received the Royal assent on the 1st of June, 1660, immediately after the restoration of Charles II.

The other instance of a Parliament, summoned by writs, not issued by the King’s authority, is the Convention Parliament, which met on the 22d of January, 1688, and which was elected, by virtue of letters written by the Prince of Orange, in consequence of the address of the Lords Spiritual and Temporal, and of those Members of the House of Commons that had served in any of the Parliaments during the reign of Charles II. who, together with the Aldermen, and several of the Common Council of London, had assembled at St. James’s, on the 26th of December, at the desire of the Prince of Orange. These letters were directed to the Lords Spiritual and Temporal, and to the several counties, universities, cities, boroughs, and cinque ports, for calling of a Convention to meet upon the 22d of January\*. After settling the Crown on the Prince and Princess of Orange, an Act was immediately passed, as in the former instance, for removing and preventing all questions and disputes, concerning the assembling and sitting of this present Parliament, by which “ this Convention are de-

declaring this to be the law; and a clause, for this purpose, was inserted in an Act, which passed in the 13th of Charles II. chap. 1. intitled, “ An Act for safety and preservation of his Majesty’s person and government, against treasonable and seditious practices and attempts.” See further, the King’s speech on the 21st of March, 1663, at the opening of the Session.

\* The notices to be published of the time of proceeding to these elections, were to be five days in counties, and three days for cities, universities, boroughs, and cinque ports. The Prince of Orange’s letters were dated the 29th of December, and the Convention assembled on the 22d of January. This Parliament was dissolved on the 6th of February, 1689.

“ clared to be the two Houses of Parliament to all intents and  
 “ purposes whatsoever, notwithstanding any want of writ of sum-  
 “ mons, or other defect;—and that this Act, and all other Acts,  
 “ to which the Royal assent shall be given, before the next proro-  
 “ gation, shall be understood, taken, and adjudged in law to com-  
 “ mence upon the 13th day of February, on which day their  
 “ Majesties, at the request, and by the advice of the Lords and  
 “ Commons, did accept the Crown and royal dignity of the King  
 “ and Queen of England, France, and Ireland, and the dominions  
 “ and territories thereunto belonging \*.”

By the statute of the 6th of Anne, chapter 7. sect. 4, it is pro-  
 vided, that from thenceforth, no Parliament shall be determined or  
 dissolved by the death or demise of her Majesty Queen Anne, her  
 heirs or successors; but such Parliament shall and is by the said Act  
 enacted to continue, and is empowered and required, if sitting at  
 the time of such demise, immediately to proceed to act, notwith-  
 standing such death or demise, for and during the term of six  
 months, unless it shall be sooner prorogued or dissolved:—and if  
 such Parliament shall † be prorogued, then it shall meet and sit  
 upon the day to which it shall be prorogued, and continue for the  
 residue of the six months, unless sooner prorogued or dissolved.

\* Notwithstanding this statute, it was  
 thought adviseable, on the meeting of the  
 next Parliament, elected by virtue of *writs*  
 issued by King William and Queen Mary, to  
 pass another Act, “ For recognising their  
 “ Majesties, and for avoiding all questions  
 “ touching the Acts made in the Parliament  
 “ assembled at Westminster, the 13th of  
 “ February, 1688.” This Act, the 2d of  
 William and Mary, stat. 1. chap. 1. *enacts*,  
 “ That all and singular the Acts made in  
 “ the said Parliament, were and are laws and

“ statutes of this kingdom.” See in the  
 Lords Journal of the 5th of April, 1690, a  
 very curious protest, on the subject of this  
 Bill, touching the validity of the last Parlia-  
 ment—and the objection which had been  
 made to the want of writs of summons.

† That is, by the successor to the Crown;  
 this provision is therefore expressed with less  
 ambiguity in the 7th and 8th of William III.  
 chap. 15. sect. 1. “ That if such Parliament  
 “ shall be so prorogued.”

Then follows in section 6th, the following very extraordinary provision, viz. "That in case there is no Parliament in being, at the time of the demise of the Crown, 'that has met and sat,' then the last preceding Parliament shall immediately convene, and sit at Westminster, as if the said Parliament had never been dissolved \*."—The same provision is made, and with the same expression, "that has met and sat," by the Regency Bills of the 24th of George II. ch. 24 †, sect. 18, and of the 5th of George III. ch. 27, sect. 20.—The construction of this expression, "that has met and sat," has been always understood to be "a Parliament, of which 'a session' has been held;" and to constitute 'a session‡,' it has been held, that an Act of Parliament must have passed both Houses, and must have received the Royal assent. James the First, in his commission for dissolving the Parliament, in 1614, § says, "Sed, pro eo quod nullus regalis assensus, aut responsio,

\* See before, p. 107, note \*.—This measure had been suggested several years before by Sir Edward Seymour.—On the 22d of November, 1678, the Speaker, in a Committee of the whole House, says, speaking of measures of security to be adopted against the danger from a Popish successor to the Throne, "I would not scruple to make a law, That, upon the demise of the King, the Parliament then sitting, or, if there be none, that the last Parliament shall meet again, and continue for a time certain." *Grey's Deb. Vol. VI. p. 265.*

† This provision in the Act 24th George II. ch. 24, was not originally in the Bill, as it came from the Lords; but was inserted as an amendment by the Commons, on the 20th of May, 1751.

‡ "The session is never understood to be at an end, until a prorogation: though, unless some Act be passed, or some judgment given

in Parliament, it is in truth no session at all."—Blackstone, Vol. I. p. 186.

§ It appears from Rolle's Reports, Vol. I. p. 29, that the same opinion was held in Westminster-hall upon this occasion.—For he says, "Et ore Coke dit, que ceo ne fuit un Parliament, mes seulement un inception d'un Parliament, pur ceo que ne fuit aucun Royal assent, ou dissassent; et pur ceo l'estatutes, que fuerunt fait en le Parliament, devant continuer tanque le primar session del prochain Parliament, sont en force." And the reporter subjoins this note, in confirmation of Sir Edward Coke's opinion: "Nota, Que jeo aie estre crediblement informe, que per l'opinion de tous les Justices, ou plus parte de eux, les statutes avant dits ne sont determine pur le cause avant dit." Nota auxi, "Que apres le dissolution del cest Parliament, com est avandit, le Seignor Chancellor mist un command

“ responsio, per nos præstita fuit, nullum Parliamentum, nec aliqua  
 “ sessio Parliamenti, habuit aut tenuit existentiam\*.”—And in  
 compliance with this construction of the law, (and to obviate those  
 difficulties, and that confusion, which must arise on the meeting of  
 a ‘ dissolved ’ Parliament, even though another Parliament should  
 be actually elected and returned, provided this Parliament “ had  
 “ not met and sat,” i. e. had not passed a Bill which had received  
 the Royal assent,) it was thought prudent, in the years 1754, and  
 1768, for the Parliament to meet ‘ immediately ’ on its election,

“ command al Cursitors, que ils ne duissent  
 “ faire aucun brief pur aucun Chevalier ou  
 “ Burges del Parliament pur son charges.”

—So in Hutton’s Reports, p. 61. in the vacation after Hilary term, 20 Jac. I. all the Judges being assembled at Seijeant’s Inn, to determine whether a statute was or was not in force, these points were resolved, “ If a  
 “ Parliament be assembled, and divers orders  
 “ made, and a writ of error brought, and  
 “ the record delivered to the Higher House,  
 “ and divers Bills agreed, *but no Bill signed*,  
 “ That this is but a Convention, and no Parliament or Session, as it was in 12 Jac. I.  
 “ in which it is entered, that it is not any  
 “ Session or Parliament, because that no Bill  
 “ was signed.”—In Sir Robert Atkyns’s argument, in the case of *Soame and Barnardiston*, this case is cited; and he says, “ The  
 “ Judges, though the Parliament had met,  
 “ yet no Act passing, *therefore adjudged* it was  
 “ no session.”—See Atkyns’s Parliamentary Tracts, p. 144; and State Trials, Vol. VII. p. 436.—See also D’Ewes’s Journal, p. 383; where it is said, “ No one Bill passing, and  
 “ so no Royal assent putting life into any  
 “ one law, it could not be a session, but a  
 “ mere meeting.”—See upon this subject a letter from Mr. Selden to Lord Bacon, dated

the 14th of February, 1621; who had, upon the objection, “ That the meeting of Parliament, in which Lord Bacon was condemned, having been declared by the  
 “ King’s proclamation to be no ‘ session,’ but  
 “ a ‘ convention ’ only,” consulted Mr. Selden, Whether the judgments passed against him were valid?—Letters of Lord Bacon, published by Dr. Birch, 1763, p. 297.—After a short prorogation of two days, from the 13th to the 15th of March, 1678, of the Parliament, which had met only on the 6th of March, and in which a dispute arose between the King and the House of Commons, touching the confirmation of their election of Sir Edward Seymour to be Speaker, and in which Parliament therefore no legislative Act could have taken place; the Lords on the 17th of March, resolve, “ That their  
 “ late meeting was a session, in relation to  
 “ the Acts of judicature of this House; but  
 “ not as to the determining of laws, determinable upon the end of a session of Parliament.” This resolution of the Lords does not appear much to clear up the doubts suggested in the text.

\* See Parliamentary History, Vol. V. p. 303; and the Lords Journals, Vol. II. ad finem (where this commission is entered).

and to pass a Bill, in order to constitute ‘ a session \*.’—And indeed the confusion would be such, and the construction put upon these words, in the midst of that confusion, by those persons who should happen to be interested in the assembling of the ‘ old ’ or ‘ new ’ Parliament, would be so different, that in considering this question, it must appear extraordinary that no Act of Parliament has passed, to obviate all these difficulties ; and to make it clear what ought to be done, if the event of the demise of the Crown should happen, either during the election of a new Parliament ; or after the election, but before their meeting ; or after their meeting, but before a Bill should be passed, so as to constitute it a legal session †. It has not yet happened since the passing of this law, that a demise of the Crown has taken place without a Parliament “ in being,” or “ that has met and sat.”—King William died on Sunday the 8th of March, 1701, and both Houses met and sat upon that day.—The Parliament was then sitting, and each House had, upon the day before, severally adjourned itself to the next day, though it was Sunday, probably in expectation of this event.—Queen Anne died upon Sunday the 1st of August, 1714 ‡, upon

\* This intention is expressed in the speeches from the Throne, at the opening of these Parliaments, “ His Majesty has not called you together, in order to lay before you any matters of general business, but merely to give you an opportunity of dispatching *certain parliamentary proceedings*, which his Majesty’s desire of providing, *at all events*, for the welfare and security of his good subjects, makes him wish to see completed as soon as possible.”—Commons Journal, 13th of May, 1768.

† An Act, for this purpose of assembling the Parliament in case of the demise of the Crown, had passed in the 7th and 8th year

of King William, chapter 15, and what is remarkable, that act was so worded as to avoid *this* difficulty.—For there the expression is, “ That in case there shall be no Parliament *in being*, at the time of the demise, then the last preceding Parliament shall immediately convene and sit.” But another difficulty arose, viz. “ What constituted a Parliament *in being* ?” And in order to explain this, the Legislature in all the subsequent Acts upon this subject, have added the words, “ that has met and sat.”

‡ It appears from a letter, from Baron Schutz, published in the 2d volume of M<sup>r</sup> Pherfon’s “ Original Papers,” p. 545, that

upon which day both Houses, though then separated by prorogation to the 10th of August, met and sat.—King George I. died abroad, upon the 11th of June, 1727, and George II. being proclaimed upon the 15th of June, the Parliament, which stood prorogued to the 27th of June, assembled on the 15th.—King George II. died upon Saturday, the 25th of October, 1760, and George III. was proclaimed on Sunday, the 26th, upon which day both Houses of Parliament met, though then separated by a prorogation until the 13th of November \*.

It appears from the Journal of the House of Commons, of the 22d of December, 1693, that in a Bill “for frequent calling of “Parliaments,” which had passed the Lords, and was then depending, but was afterwards rejected, there was a clause, “That

that upon Queen Anne’s illness between the dissolution of the late Parliament, on the 17th of August, 1713, and the opening of the new Parliament on the 16th of February following, apprehensions were entertained of the difficulty arising, that is above-stated.—He says, in a letter to Mr. Robethon, at Hanover, dated from London, the 5th of January, 1713–14, “The Ministry, during “the Queen’s late illness, were embarrassed, “by their uncertainty, “*Whether the late “or the new Parliament should assemble, in “case of her Majesty’s death.—But as the old “must meet then, they will do every thing they “can to assemble the new very soon.*” The Parliament had been summoned to meet on the 12th of November: but had been prorogued from time to time, and was not opened till the 16th of February. Mr. Schutz, though a foreigner, probably wrote what was at that time the opinion of the Ministers, and best informed persons on this subject. It appears

from the Continuation of Rapin’s History, that Queen Anne’s ill state of health was the cause of the Parliament’s not meeting on the 12th of November, the day of summons, and that during the months of December and January, she continued very much indisposed. Had Queen Anne died at that time, though the new Parliament had been chosen, and the day, on which the writs were made returnable, was actually past, yet Mr. Schutz says, as upon a question out of all doubt, “That the old Parliament must have met “then.” Is it not strange, that this difficulty, which embarrassed Ministers four-score years ago, should be permitted to continue; and should not be cleared up and the question settled, by a short Declaratory Act of Parliament, before the event happens, and a confusion arises, on a doubt, which there will be no authority competent to determine?

\* See before, p. 107, note \*.

“ it should be understood to be a Parliament holden, if it be  
“ assembled, although it happen that no Act or judgment should  
“ pass, within the time of their being so assembled \*.”

\* Lord Somers was Keeper of the Great Seal, and Speaker of the House of Lords, at the time that this clause was inserted by the Lords in this Bill.—See the debate in the House of Commons upon this Bill, in Grey's Debates, Vol. X. p. 368, to 373, and parti-

cularly upon the ambiguity of the word “ holden.” Perhaps the short declaratory clause, which was in the Bill of 1693, might answer every purpose, to remove this difficulty.



## K I N G.

II. *Opens the Session:*

1. **O**N the 18th of February, 1662, on the day of the meeting after a prorogation, Bills are read, writs issued, and Committees appointed, before the entry of the message from the King, to attend him in the House of Peers.

2. On the 16th of March, 1663, the King not being able to come on the day of the meeting, sends a message by a Secretary of State, on which the House adjourns for four or five days.

3. On the 20th of February, 1665, the House meeting on the day to which they were prorogued (after a proclamation had issued, giving notice of a further prorogation) issue warrants for new writs. The same proceeding was about to be had, on the 23d of April, 1666, but was interrupted by the Black Rod.

4. On the 18th of September, 1666, a Bill was read, and writs issued, though the King did not come to the House of Lords on that day.

5. On the 6th of March, 1678, the Parliament met, and was opened by a speech from the Throne.—On the 13th of March, it was found necessary to prorogue the Parliament \* for two days,  
to

\* This necessity arose, from the dispute, which the King's disapprobation of Sir Edward Seymour to be Speaker had given rise to. When the Parliament met again on the

15th, a question was moved in the House of Lords, to consider, "Whether the last prorogation made a session." The debate was adjourned till the 17th, when the Lords resolve,

to the 15th, when the King again makes a speech, in which he says, " Though this has been a short recess, yet there are some doubts, whether you can take notice, of what I said at the opening of this Parliament; in point of form therefore, it is necessary, that I recommend to you now, what I and the Chancellor said the other day, as if we said it now."

6. On the 8th of September, 1690, the House being met, and the King not coming (being, as appears from the entry in the Journal of the House of Lords\*, though arrived in England†, not yet come to London) the House adjourns till the 11th, and from the 11th to the 12th.

## 7. On

resolve, " That it was a session in relation to the acts of judicature of this House; but not as to the determining of laws determinable upon the end of a session of Parliament."

\* This entry is as follows:—The Lord President said, " I am commanded by the Queen to acquaint this House, that his Majesty is arrived very safe in England, and she expects him here on Wednesday next: for this reason there can be no prorogation at this time; and for prevention of all inconvenience, her Majesty desires, that this House would adjourn themselves to Friday next."

† At this time Queen Mary exercised the Regal Power, during the absence of King William in Ireland—which she was authorized to do, by an Act that had passed in the last session, the 2d William and Mary, sess. 1st, chap. 6.—Whilst this Bill was depending in the House of Lords, the Lords, on the 8th of May, 1690, put several questions to the Judges. (1.) " How far the King could delegate any part of the exercise of the Royal Power? (2.) And what effect two concurrent administrations might pro-

duce?" On the 9th of May, the Judges being asked, " Whether, if the King shall have occasion to go out of the kingdom, he can delegate the exercise of the Regal Power and Government in the Queen, without an Act of Parliament?" Lord Chief Justice Holt, on the 12th of May, was heard, and said, " That he and nine other of the Judges met together, and were all of opinion, that, without such an Act of Parliament the King cannot delegate to the Queen." The Act, passed on this occasion, extending only to authorize the Queen to act, whilst the King was out of the kingdom, she could not, under the present circumstances, prorogue or open the Parliament. This Act, being a temporary statute, is not printed in the Statutes at large; but is to be found in the Report, which was made to the House of Commons on the 12th of December, 1788, from the Committee, who had been appointed " to examine and report precedents of such proceedings as may have been had in the case of the personal exercise of the Royal Authority being prevented or interrupted by infancy, sickness, infirmity, or other-

" wife,

7. On the 16th of November, 1708, and the 1st of February, 1736, the Parliament is opened by Commissioners, who are authorized to declare the causes of the King's holding the Parliament\*.

8. On the 17th of December, 1765, the King opens the session with a speech from the throne; but as, from a change of Ministers during the recess, a great number of Members had vacated their seats, his Majesty informs the Parliament that he has called them together, only "for the purpose of issuing the necessary" writs, so that Parliament may be full to proceed, immediately "after the usual recesses."—On the 14th of January, 1766, the King delivers another speech, containing those public topics, which he recommends to their consideration.

## OBSERVATIONS.

At the beginning of a Parliament, and at the commencement of every session after a prorogation, the cause of summons† must

"wife, with a view to provide a remedy for the same."—The necessity of enabling the King to delegate this power to the Queen, by Act of Parliament, arose, from her being already, by law, not only Queen Consort, but Queen Regnant, jointly with the King.—Had it been otherwise, the King might, by letters patent, have appointed her Guardian of the Realm, and his lieutenant; as in the year 1716, George I. appointed his son, the Prince of Wales; and as George II. several times appointed Queen Caroline, Guardian of the Realm.—See the debates in the House of Commons on this Regency Bill of the 2d of William and Mary, on the 1st, 5th, and 6th of May, 1690. *Grey's Debates, Vol. X. p. 102, et subs.*

\* On the 16th of February, 1713, the Queen not being present, on the first day of

the session, Commissioners are appointed to open the Parliament, who direct the Commons to chuse their Speaker, and at the same time inform the Lords and Commons that, "as soon as the Members of both Houses shall be sworn," the Queen in person will declare the causes of her calling this Parliament."—This was on the 16th of February, and the speech from the throne was not till the 2d of March.

† See the 6th chap. of Elfyng—*De summationis causâ*.—In 1713, though, after the Speaker was chosen, the House of Commons sat several days for the purpose of the Members qualifying, the Bill for "preventing clandestine outlawries," was not read, till after the speech had been delivered from the throne, declaring the cause of summons.

be declared to both Houses, assembled, either by the King himself, or by some person by his command, or by persons authorized by his commission, before either House can proceed upon any business whatever \*. The proceedings, therefore, on the 18th of February, 1662, the 20th of February, 1665, and on the 18th of September, 1666, were certainly informal. But notwithstanding that this declaration of the cause of summons is necessary for the opening of the session, and as it were, to give life and existence to the Parliament, the House of Commons are by no means obliged to proceed 'first' \* in the consideration of the matters expressed  
in

\* There is a very remarkable proceeding in the year 1689.—On the 19th of October, the King, after several adjournments from the 20th of September, comes to the House of Lords, and makes a speech from the throne. On the 21st of October the Parliament is prorogued for two days, to the 23d; upon which day the King opens the Session with the following speech: "I have spoken to you so lately, I think it best to refer you to what I spake in my last speech, matters not being altered; and therefore do desire you will take it into your speedy consideration." I do not, in the history of these times, find any reason given for this prorogation.—When the King spoke to the Parliament on the 19th of October, he demanded supplies, as at the beginning of a session; and it appears from the Commons Journals, that *that* speech, though made in a former session, was read by the Speaker on the 23d, and proceeded upon as the ground of their deliberations.—I guess, that the reasons for this prorogation, and which rendered it necessary, were, that *the Bill for declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown*, which had passed the House of Commons, was lost from a disagreement between

the two Houses, relating to an amendment made by the Lords, for inserting the name of the Princess Sophia in the succession; and, all parties being desirous to pass a Bill of that great importance, a new session was necessary, to entitle it, in point of form, to be brought in again.—See before, the note \* p. 7, and also Burnet's History, Vol. II. p. 15.—Commons Journals, 16th of July, and 24th of October, 1689—on which latter day a Committee was appointed to inspect the Bills which were depending in the last session: and the same Committee were ordered to prepare and bring in a Bill "for establishing the Rights of the Subject."

\* Or to *confine* their deliberations to the subjects recommended to them by the crown.—In the debate on a motion made by General Conway, on the 22d of February, 1782, relative to the mode of carrying on the war with America, an objection was hinted at, "that it was very unusual, if not unconstitutional, to carry up an address to the throne on the subjects of war or peace, when not introduced to the consideration of the House by a message or speech from the throne." Though this objection was only slightly suggested, and not relied upon, yet it had some weight with those Members who

were

in the speech ; and there are frequent instances of their postponing that consideration to other business, and sometimes for several days.—Indeed the usual practice, for several years past, has been, immediately on returning from the House of Lords, to read a

were unacquainted with the Parliamentary History of this country, or unknowing of the rights and privileges of the House of Commons; and it induced General Conway, in his speech on Wednesday the 27th of February, when he introduced a similar question to the House, to cite a string of precedents, from the time of Edward III. to the present, in which the House of Commons had exercised this right, “of giving their advice unasked to the Crown, in matters upon which it was solely and entirely within the King’s prerogative how to act.”—See upon this subject, Parliamentary History, Vol. V. p. 487. to p. 509.—There is a very extraordinary answer, made by all the Judges of England, to a question put to them upon this subject, by Richard II. in the year 1387;—“That the King, when the Parliament is assembled, has the government, and may appoint what shall be first handled, and so gradually what next, in all matters to be treated of in Parliament, even to the end of the Parliament: And if any act contrary to the King’s pleasure made known therein, they are to be punished as traitors.” Parliamentary History, 1st volume, p. 408.—A late writer upon the English Constitution, makes the following remark, upon this opinion:—“It soon became evident, that Richard II. had formed a resolution of extending his prerogative, beyond its ancient limits; for this purpose he consulted with the Judges and principal Lawyers of the kingdom, from whom he found no difficulty, in procuring an unanimous opinion, agreeable to his wishes.”—Millar’s Historical View of the English Government, book 2d, chap. 5.

page 356.—Compare this remark with Lord Clarendon’s observation on the conduct of the Judges, in the reign of Charles I. as cited in the first volume of this Work, p. 203, and in the note to that page.—These reflections, on the characters of the Lawyers, might perhaps be justified, from their behaviour, in the times of Richard II. and of Charles I. and with still more reason, in the subsequent reigns of Charles II. and James II. but, ever since that period, the purity and upright integrity of those, who have been appointed to administer Justice in the Courts of Westminster-hall, have entirely removed every such imputation; and what, from Lord Clarendon, was a just and deserved animadversion, would now be the most unmerited calumny.—In former times, the Judges were dependant on the Crown for their continuance in office, and for their salaries; and the House of Commons, whose peculiar duty it is to be strictly watchful over the conduct of the Courts of Justice, then sat but seldom, and for a short time, with long and frequent intermissions. It is now above a century, that, to the honour of the professors of the law, and for the happiness of the people, justice has been administered by these venerable Magistrates, without a suspicion of their being influenced by undue or improper motives; and this country has, in this instance, enjoyed a blessing, ever since the Revolution, which other nations have admired and envied, but which, to the same extent, they have never been able to acquire.—See in the 4th volume of this Work under title “Impeachment,” chap. the 1st, *Judgment by the Lords*, the notes to N<sup>o</sup> 3.

Bill prepared of course by the Clerk ; in order \*, as I suppose, to assert the claim of not being obliged to give precedence to the subjects contained in the King's speech.—If the King is prevented by illness, or any other sudden cause, from coming himself, and no commission is prepared, for opening, or further proroguing, the Parliament, the House of Commons ought immediately to adjourn, as in the instances of 1663 and 1690 †.

• See before, p. 76, 77, 78.

† But see, in the Journals of both Houses, the proceedings on the meeting of Parliament, on the 20th of November, 1788, when

the King, from indisposition, was unable to come in person, or to sign a commission for proroguing, or holding the Parliament.

## K I N G.

III. *Adjourns the Parliament.*

1. **O**N the 18th of December, 1606, the Speaker adjourns the House, upon a message from the Lords, signifying the King's pleasure, "that the session should be adjourned."

2. On the 20th of May, 1607, Mr. Speaker signifies his Majesty's pleasure, "to adjourn this Court to Wednesday the 27th." On the 27th, Mr. Speaker endeavours to clear himself, "having been challenged to adjourn the Court, without the privity of the House." "But (he said) as the House had power to adjourn, so had his Majesty a superior power; and in his name, and by his direction, he did it."

3. On the 30th of March, 1610, the King's pleasure signified, to adjourn from Tuesday to Monday sevensnight; which is done accordingly.

4. On the 31st of May, 1621, Sir Edward Coke says, "the commission must be only declaratory of the King's pleasure, but the Court must adjourn itself." \* And on the 4th of June, the Lords sending down a message with the King's commission for the adjournment (which is entered in the Lords Journals, with their proceedings upon it) the Commons decline hearing the com-

\* See the entries in the Lords Journal of the 31st of May, and the 1st of June, of the precedents cited by the Attorney Gene-

ral upon this subject.—See also the King's speech on the 2d of June.

mission read; but, after the departure of the messengers, “ the House taking notice of his Majesty’s pleasure, by his commission, ‘ adjourns itself ’ till the day appointed \*.” And the same proceeding is held on the 14th of November.

5. It appears from Rymer, 17th Volume, p. 324, that during this vacation, on the 6th of October, 1621, the King published a proclamation, signifying ‘ his intention ’ to have the Parliament further adjourned, from the 14th of November to the 8th of February; but it does not appear that any commission was made out or signed for that purpose; for on the 3d of November, the King published another proclamation, which is in Rymer, p. 326, signifying that he had altered his former resolution, and that he intended only to adjourn the Parliament from the 14th to the 20th of November. The commission for this latter purpose is entered in the Lords Journals.

6. On the 11th of July, 1625, the Lords send a message, that they have received a commission under the Great Seal, for granting the Royal assent to Bills, and another commission for adjourning the Parliament, “ which they are now ready to publish, if “ the House will come up and hear them.” The Commons send for † answer, “ that they will most willingly attend to hear the “ commission read for ‘ the Royal assent; ’ but desire they may “ not stay to hear the commission for the adjournment, but that “ they may depart ‘ to adjourn themselves, ’ according to ‘ the use “ and privilege ’ of their House ” And it appears from the Journals of the Lords, that this was so done accordingly.

\* See an account of this proceeding in the 1st volume of this Work, p. 179.

† This answer is entered in the Journal of the Lords, but not in the Commons Journal.



7. On the 5th of April, 1626, the Chancellor of the Exchequer reports, that when the Members, appointed to attend his Majesty with the remonstrance, had attended him accordingly, the King said, "he 'expected and desired' we would adjourn, "as the Lords had done, till to-morrow sevensnight." On putting the question, "Whether the House would accordingly adjourn to that time," it was carried by 150 to 120 for the adjournment.

8. On the 10th of April, 1628, Mr. Secretary Coke brings a message from the King, "That his Majesty, for many weighty reasons, desires there may be no recess during the Easter holidays." It appears from the Parliamentary History, Vol. VII. p. 435, that this message was not well pleasing to the House; it produces a debate, in which Sir Edward Coke says, "The King makes a prorogation, but 'this House adjourns itself;' the Commission of adjournment we never read, but say, 'This House adjourns itself.'" And on sending a message to the King, that the House would give all expedition to his service, 'notwithstanding their purpose of recess,' his Majesty answers, "That he wished them all alacrity in their proceedings, and that there be no recess at all."

9. On the 2d of March, 1628, the Speaker, Sir John Finch, as soon as he had taken the Chair, delivered a Message from his Majesty, commanding him "to adjourn the House, till Tuesday sevensnight following:" to this, several Members objected.— See the proceedings upon this, in the 8th volume of the Parliamentary History, p. 327, and the resolution of the House in the Journal of the 20th of April, 1640\*.

\* See also Rushworth's Collect. Vol. I. p. 660.

10. On the 31st of August, 1660, a message from the King, relative to a recess; on the 1st of September, it is ordered, "That the Committee do represent to the Lords (at a conference) that, upon the next recess, it will be most convenient for the House to adjourn themselves, and to offer these reasons, That if it should be a prorogation, or 'adjournment by writ,' all matters depending before the House will be discontinued." On the 13th of September, the King, in his Speech, says, "Upon the desire and reasons given by the House of Commons, for an adjournment without a session, I did very willingly depart from the inclination I had to make a session, and do as willingly give you leave, and 'direct you,' that you adjourn yourselves to the 6th of November."—On their return, it is entered in the Journal, "That, according to his Majesty's leave and direction, they adjourn themselves to the 6th of November \*."

11. On the 30th of July, 1661, his Majesty, in his speech in the House of Lords, being pleased 'to direct' both Houses to adjourn to the 20th of November, the House 'resolve' to adjourn

\* On Saturday the 22d of December, 1660, the King sends a message to the House of Commons, "That he will come on Monday the 24th to pass such Bills as shall be ready; and then that the House adjourn till Thursday the 27th, so that on Thursday and Friday they may put an end to their business, and that he will come on Saturday to dissolve the Parliament." When the Commons are debating on Monday to what day they shall adjourn, whether to the Wednesday or Thursday, Mr. Pierrepont moves, that the King's message might not be entered on the Journal, "lest it should be thought,

"that the House adjourned solely upon that message, which might be construed to be a breach of privilege, though he himself did wholly submit and comply with the King's desire: for he said, that the King could not adjourn the House, though he could dissolve it; but that the House must adjourn, as an act only of itself." Accordingly the message is not entered in the Commons Journal, and the entry on the 24th of December is, "Resolved, That this House do adjourn till Thursday next." *Parliamentary History*, Vol. XXIII. p. 67.

to that day.—So on the 19th of December, 1667, and 9th of May, 1668.

12. On the 11th of August, 1668, the House met; and “ his Majesty having, by his proclamation, signified ‘ his pleasure,’ “ that there should be a further adjournment to the 10th of “ November;” the House direct warrants to be issued for new writs, and then ‘ according to his Majesty’s proclamation,’ adjourn to the 10th of November.—See also the proceeding on the 10th of November.

13. On the 11th of April, 1670, the King, in his speech, having signified ‘ his pleasure,’ that the House should adjourn to the 24th of October, the House adjourns accordingly. So on the 29th of March, 1673; and on the 5th of June, 1675, where the King desires they would adjourn till the afternoon.—See also the 16th of April, and 28th of May; and the 16th of July, 1677.

14. On the 3d of December, 1677, message from the King, “ ‘ that having given notice’ by proclamation \*, that he intended “ the Houses should be adjourned to the 4th of April, he now “ thought fit to meet them ‘ sooner;’ and therefore his pleasure “ is, that this House be adjourned till the 15th of January.”—See the entry on the 15th of January.

\* It appears from Kennet’s History of England, Vol. III. p. 343, that this proclamation was issued on the 26th of October; and signified, “ that on the 3d of December “ (being the day prefixed for their assem-

“ bling) the House of Peers *may adjourn*. “ *themselves*, and the House of Commons. “ *may adjourn themselves*, until the 4th day of “ April next ensuing.”

15. On the 15th of April, 1678, the King's pleasure signified in the House of Lords, to both Houses of Parliament, "that the Houses should adjourn." The House of Commons proceed to do business, and then 'upon the question,' adjourn themselves to the day appointed by the King.

16. On the 2d of July, and 4th of August, 1685, the House adjourns, in pursuance of the King's pleasure signified.—See also the 30th of October, 1707; and 14th of January, 1711; and 21st of June, 1712; and the 21st of November, and the 14th of December, 1715; 3d of February, 1741, and 27th of November, 1745; and 10th of December.—See also the 27th of May, and 18th of June, 1756.

17. On the 20th of August, 1689, the King desires both Houses would severally adjourn till the 20th of September; but that his Majesty did not intend there should be then a Session, unless some emergency happened, but that such Members as should be in and about town, should meet, and adjourn until winter.—And that when his Majesty intended there should be a Session, he would give them notice by proclamation. On the 20th of September, the House of Commons meets, and Mr. Comptroller brings a message from the King, to desire, That the House would adjourn till the 19th of October, and that he then intended both Houses should sit, and that he would issue a proclamation to give public notice thereof.

18. On the 23d of May, 1690, King William having given the Royal assent to several Bills, and having made a speech from the throne, the Speaker of the House of Lords \* declared, whilst  
the

\* This Speaker was Sir Robert Atkyns, Chief Baron of the Exchequer, and Knight of the Bath. He had been appointed

Speaker of the House of Lords by the King's commission, dated the 19th of October, 1689, to supply the place of Lord Chancellor

the King was on the throne, and the Commons present, "That the Parliament was adjourned," but finding his mistake, he declared the King's pleasure "That both Houses should adjourn themselves." And after his Majesty was withdrawn, having asked pardon for the said mistake;—The Lords order, "That an entry of this should be made accordingly in their Journal\*."

## OBSERVATIONS.

I think we may collect from these instances, that it is the undoubted privilege of the House of Commons to 'adjourn themselves,' † whether the King's pleasure is signified by himself in person,

cellor or Lord Keeper. Till this time, the Marquis of Halifax had executed the office of Speaker, pro tempore, from the 22d of January, 1688. Sir Robert Atkyns continued Speaker till the 23d of March, 1692–3, when Sir John Somers was appointed Keeper of the Great Seal; and first sat, as Speaker of the Lords, on the 2d of May, 1693.

\* No notice is taken of this mistake in the Commons Journal.—The King's pleasure to adjourn is reported; and the House resolve immediately to adjourn.

† Two instances have occurred to me, since the last publication of this volume, which "seem" to contradict this doctrine.—The first is in Sir Simonds D'Ewes, p. 318 and 345, where the two Chief Justices, the Lord Chief Baron, and Master of the Rolls, are sent down from the Lords, on the 21st of December, 1584, with a commission under the Great Seal, directed to several Lords, "to adjourn the Parliament to the 4th

"of February;" and the Chief Justice of England declared, that the said Lords Commissioners have adjourned "the same" in the Upper House, and have sent them to signify the same adjournment over unto this House, that the Members may take notice of the same adjournment accordingly: which, after the messengers withdrew, being declared to the House by Mr. Speaker, this Court thereupon, "by warrant and in form afore said," was adjourned unto the said 4th day of February.—The Journals of the House of Commons of this Session are missing, but the commission is entered in the Lords Journal, 2d volume, p. 77.—The other instance is on the 2d of December, 1586, where there is an entry in the Lords Journal, "Commissionarii Regi-  
"nae adjornavere præsens Parliamentum us-  
"que in 15<sup>m</sup> diem Febr<sup>li</sup> proximum."

I used the expression of "seem" to contradict this doctrine, because, notwithstanding

person, or by his command, or by commission \*.—It appears too from some of these cases, that the House, even after the signification of the King's pleasure, have proceeded to do business, and then have adjourned 'upon question,' and sometimes not without a division †. It should therefore seem, that the House do not think themselves bound by law, in this case, to obey his Majesty's commands; but, if the nature of the business which is before them requires it, and they think it fitting, that they may continue to sit; and yet I have not found a single instance where the House have not, however reluctantly, complied with his Majesty's pleasure, not only in adjourning 'on' the day, but 'to' the particular day, specified in the message. It appears, however, from

Grey's

ing these entries, it is by no means clear, whether these were adjournments or prorogations, particularly the latter.—It appears from D'Ewes's Journal, p. 382 and 407, that with respect to what passed on the 2d of December, 1586, "There hath been much mistake and difference; both in the original Journal book of the Upper House, and in that also of the House of Commons; in the very rolls of the statutes of this Parliament, transcribed by the Clerk of the Upper House into the Chancery, and remaining in the Chapel of the Rolls; and lastly, in the very printed books of the statutes thereof." All these considered this proceeding as a prorogation, and not as an adjournment.—And with regard to the first instance of the 21st of December, 1584, besides the singularity of it, we see from N° 4, in p. 294 of this volume, where a similar proceeding was had in 1621, what Sir Edward Coke's opinion upon it was, and how the House conducted themselves on that occasion.

\* The mode that has been, I believe uniformly, followed since the Revolution, has been, either for the Chancellor, when the

King is present in the House of Lords, to signify his Majesty's pleasure to the Parliament—which the Speaker reports to the House of Commons, on their return: Or, for the King to signify his desire by a message to each House separately, which is delivered by some Privy Counsellor.

† On the 2d of January, 1711, after the introduction of the twelve Peers, into the House of Lords, the Lord Keeper acquaints the House, "That he had a message from her Majesty, under her Royal Sign Manual, to deliver to the House." The substance of this message was, "That it was her Majesty's pleasure, that the House should adjourn to the 14th of January." The question was then proposed, to adjourn accordingly, and a debate arose, but upon the question being put, it was carried, as Bishop Burnet says, "by the weight of the twelve new Peers." See his account of this proceeding, History of his Own Times, Vol. II. p. 589. It appears from the Lords Journals, that, on the division on this question, the numbers were 81 to 68, a majority of 13.—Bishop Burnet explains this by adding, "It is true, the odds in the books is 13; but

Grey's Debates \*, that it is by no means an established doctrine, that they are obliged to pay this obedience ; for, notwithstanding that the King had himself, in the House of Lords, required the House of Commons ' to adjourn immediately,' Mr. Powle, Sir T. Lee, and several others, on the 28th of May, 1677, attempted to speak, and were only prevented by the Speaker's, Sir Edward Seymour, springing out of the Chair, after having adjourned the House by his own authority.—This scene is repeated on the 16th of July, 1677, and on the 3d of December, and 15th of January : On the 28th of January, this irregular behaviour of the Speaker's is very severely censured by Mr. † Sacheverel, Lord Cavendish, Mr. Powle, and several others. On the 6th of February, 1677, the Speaker desires the House to appoint a day to consider of the adjournment of the House, which had been complained of ; and tells them, " that if he be not otherwise ordered by the House, he shall " do the same thing again, on the next occasion." On Saturday the 9th of February, this matter is again debated ; and in Mr. Powle's speech, and Sir Edward Seymour's justification, besides a great deal of other Parliamentary learning, there is contained all that can be urged on both sides of this question. Nothing however was finally decided by the House ; for a motion being made, in the middle of the debate, ' to adjourn,' this question was put, and carried by 131 to 121.

The proceedings of the House of Commons, in the years 1621 and 1625, on the King's commission\* for adjourning the Parlia-

" but that was because one of the Peers,  
 " who had a proxy, without reflecting on it,  
 " went away when the proxies were called  
 " for."

\* See a very curious account of the proceedings upon this occasion in Grey's De-

bates, Vol. IV. p. 390, 391, and Vol. V. p. 1 and 2.—See also p. 95 and 122.

† See Mr. Sacheverel's and the other speeches in this debate, in the 5th volume of Grey's Debates, p. 5.

ment, are very extraordinary. It appears from the commission itself, which is entered at length in the Journal of the House of Lords\*, that this was a commission to certain Lords to 'adjourn the Parliament,' and ought therefore to have been read, as is done in similar cases, to the two Houses 'assembled.' But in the latter instance, the Commons actually excuse themselves, by message, from attending to hear the commission read, and the Lords acquiesce in this excuse; and in neither instance is the commission, though it is for adjourning 'the Parliament,' ever read in the hearing of the House of Commons.—They considered it only in the light of a 'message' signifying the King's pleasure.

However inconvenient the sudden alteration of the time of meeting, in 1677, might have been to particular Members, there was no irregularity, much less illegality, in the proclamation issued on the 26th of October, 1677, and the subsequent message on the 3d of December†, for shortening the adjournment from the time originally designed‡. For, in the first place, these proclamations were in fact nothing more than declarations of the King's intentions to do an act on a future day; which 'inten-

\* Vide Lords Journals, Vol. III. p. 158, 466.

† Nor in those of the 6th of October, and 3d of November, 1621.

‡ Mr. Hume, in his History of the reign of Charles II, makes a great mistake, in supposing these proclamations, (which were nothing but declarations of what the King intended to do) to be in effect actual adjournments of the Parliament.—In p. 257, he says, "The King prolonged the adjournment of the Parliament, from the 3d of December to the 4th of April." And in

p. 259, "Finding that affairs were not likely to come to any conclusion, the adjournment of the Parliament was anticipated to the 15th of January, a very unusual measure, and capable of giving alarm to the French Court." It would have been indeed *unusual*; because, if the Parliament had been actually adjourned to the 4th of April, it would have been out of the King's power to have called them sooner; and the attempt to do so would have been therefore *illegal*.



‘ tions,’ before the day came, were certainly liable to be changed.— But farther—If the true Parliamentary doctrine is, what I believe it to be, ‘ that the King has no authority to adjourn the Parliament,’ but can only signify his ‘ desire,’ and that then it is in the wisdom and prudence of either House, to comply with his requisition or not, as they see fitting, then these proclamations could have no legal operation, and might be revoked or annulled at any time.

## K I N G.

IV. *Prorogues the Parliament.*

1. **O**N the 20th of February, 1665, the House meeting on the day to which they had been prorogued, after a proclamation had been issued for a further prorogation, direct writs to be issued.—The same proceeding was about to be had on the 23d of April, 1666, but was interrupted by the Black Rod; but on the 18th of September, 1666, a Bill was read and writs issued, though the King did not come that day to open the session.

2. On the 8th of February, 1666, the King prorogued the Parliament to the 10th of October, 1667; but in the interval, by a proclamation dated on the 26th day of June, 1667, and which is entered in the Lords Journals, he summons them to meet, for dispatch of business, on the 25th of July.—On the 25th of July the House of Commons meet, and resolve on an Address to the King, about disbanding the army, and then, at the King's desire, adjourn themselves for four days; when, on the 29th of July, the King comes, and, making a speech to both Houses, prorogues them to the 10th of October, the day originally intended.

3. On the 22d of November, 1675, the King prorogued the Parliament from that day to the 15th of February, 1676\*, a space of almost fifteen months.

4. On

\* This uncommonly long prorogation gave an opportunity to those, who were at that time in opposition to the administration (and

who, as appears from the Lords Journal of the 20th of November, 1675, had, at the close of the former session, moved an Address

4. On the 26th of January, 1679, the King comes in person, at the meeting of the Parliament, sends for the Commons, and instead of directing them to choose a Speaker, he makes a speech from the throne, in which he gives his reasons for proroguing them \*.

5. On the 6th of September, 1702, after a proclamation had issued to meet for dispatch of business, the Parliament is further prorogued to the 20th of October, and still forty days notice given.

6. On the 21st of September, 1704, a proclamation is issued for further proroguing the Parliament from the 19th to the 24th of October, then to meet for dispatch of business: A notice of only thirty-three days.

7. On the 21st of April, 1709, the Parliament is prorogued, by virtue of a commission from the Queen, which had been issued on

to the King to dissolve the Parliament) to propose a doubt, 'Whether this proceeding was legal,' or rather, 'Whether, by so long a separation, the Parliament was not, by law, dissolved?'—Accordingly, on the 15th of February, 1676, as soon as the King had delivered his speech from the throne, and was withdrawn, it was moved in the House of Lords, "That this House would consider, whether this Parliament be not dissolved; because the prorogation of this Parliament for 15 months, is contrary to the statutes of the 4th Edward III. and 36th Edward III." After debate, the question being put, whether this debate shall be laid aside, it was resolved in the affirmative.—In the Appendix, N° 5, are inserted the entries, that occur upon this subject in the written Journal of the Lords; which, though by a subsequent order of the 13th of

November, 1680, they are directed to be vacated, remain still legible.—They are not, however, inserted in the printed Journal.—The same doubt, respecting the legal existence of the Parliament, occurred in the House of Commons, and produced a debate, but no question.—Grey's Debates, Vol. IV. p. 64.—See Roger North's account of this business, in the Examen, p. 65.

\* Though at the commencement of a Parliament, and before a Speaker is chosen, it has been more usual to prorogue "by writ," as appears from the observations upon this title, yet, at the beginning of this Parliament, on the 7th of October, 1679, and several times after, before the opening of this session, the Commons are sent for by the Black Rod, and the Parliament is prorogued by Commissioners appointed for this purpose.

the 15th of November, 1708, at the opening of the Parliament, giving authority to certain Lords therein named, "to open and declare the causes of holding the Parliament, and to do every thing which for us, and by us, should be therein to be done; and if necessary, to continue, adjourn, and prorogue our said Parliament \*."

8. On the 13th of January, 1712, the House meet, 'after proclamation to sit for dispatch of business,' and are prorogued seven times before the opening of the session; but without any repeated notice.

9. On the 21st of December, 1716, a proclamation † is issued for the Parliament to meet, for dispatch of business, on the 17th of  
of

\* This commission of the 15th of November, had, in the several commissions which issued in the course of that session, for the purpose of passing Bills, on the 23d of December, and on the 26th of January, 1708, and on the 21st of April, 1709, been declared to continue in full force and power:—And the Lords to whom it is directed, are by the commission of the 21st of April, ordered to put in execution all the powers and authorities mentioned in the said letters patent of the 15th of November, which yet remain to be done and executed.

† This proclamation was issued by the Prince of Wales, as *Guardian of the Realm, and his Majesty's Lieutenant*, during the King's absence out of the kingdom.—In the speech from the Throne on the 26th of June, 1716, the King says, "I intend to make use of the approaching recess to visit my dominions in Germany; and to provide for the peace and security of the kingdom during my absence, by constituting my beloved son, the Prince of Wales, Guar-

dian of the Realm, and my Lieutenant within the same." By virtue of these powers, the Prince of Wales signed several commissions for proroguing the Parliament, from time to time, on the 7th of August, 18th of September, 16th of October, 20th of November, 8th and 17th of January, 1716, which are all inserted in the Journal of the House of Commons.—The commissions run in the King's name, but conclude, "Teste Georgio Principe Walliæ, &c. Custode Regni Magnæ Britanniæ et locum nostrum tenente."—Signed "per Georgium Principem, &c. propria manu signat."—So on the 22d of July, and 16th of September, 1729, the Parliament is prorogued by commissions signed by Queen Caroline, as *Custos Regni*—and they are signed "per ipsam Reginam, propria manu signat." The King had, on the 12th of May, 1729, sent a message to both Houses, to inform them of his intentions to visit his dominions in Germany, and to appoint the Queen Regent, during his absence.—Upon this message a

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of January, a notice of twenty-seven days; they are, however, on that day, further prorogued, and afterwards meet, but without any other proclamation.

10. On the 15th of June, 1727, on the demise of George I. a proclamation is issued for meeting, for dispatch of business, on the 27th of June.—See the 6th of November, 1760, on the demise of George II.

11. On the 13th of November, 1727, a proclamation is issued for Parliament to meet, for dispatch of business, on the 11th of

Bill was presented to the House of Lords, "For enabling the Queen to be Regent *without taking the oaths,*" which Bill was read three times in both Houses, and passed in the same day, the 12th of May—and received the Royal assent on the 14th.—See also the 27th of July, 1732, the 12th of June, and 31st of July, 1735, and the 29th of July, 1736, where the commission is signed by the Queen, as Guardian of the Realm.—On the 3d of June, the 19th of August, and 30th of September, 1740; and on the 7th of June, 14th of July, and 25th of August, 1743; the 30th of June, and 30th of August, 1744, the commissions for proroguing the Parliament are signed "*by the Guardians and Justices of the kingdom, with their own hands,*" and in these instances, the Guardians and Justices not being named in the commission, the Parliament is prorogued by other Lords, appointed by the commission for that purpose.—But on the 13th of October, 1748, Lord Hardwicke, Lord Chancellor, and the Duke of Bedford, Secretary of State, though Lords Justices, and signing the commission for proroguing the Parliament, are themselves named in the commission, and the Lord Chancellor actually sits as a Commissioner to execute

this commission.—On the 28th of September, and 31st of October, 1752, Lord Hardwicke, then Lord Chancellor, and one of the Lords Justices, is named in the commission for proroguing the Parliament, and sits on that occasion, but his name is not to that commission.—See the 2d of September, 1755, in the *Lords Journal*, where Lord Granville and the Duke of Marlborough sat as Commissioners to prorogue the Parliament, though their names were affixed to the commission, as Guardians and Justices of the Realm.—When the Parliament is prorogued "by writ," (at the time that the King was out of the Realm, and had appointed Lords Justices of the kingdom, there, as upon the 25th of June, 1741,) the Lord Chancellor, though one of the Justices who had signed the writ, directs the writ to be read.—And a similar proceeding was had on the 6th of August, and 10th of September, 1741.—See in the *Commons Journal* of the 12th of December, 1788, a collection of all such precedents, as could be found, of the appointment of Custodes Regni, and Locum Tenentes, and of commissions to Lords Justices in case of the King's absence.

January; but on the 22d of December there is another proclamation, for a further prorogation; and meeting on the 23d of January.

12. On the 14th of December, 1730, a proclamation for Parliament to meet, for dispatch of business, on the 21st of January, being a notice only of thirty-eight days.

13. On the 30th of November, 1738, a proclamation is issued to sit, for dispatch of business, on the 18th of January; on that day the Parliament is further prorogued to the 1st of February, but without any new proclamation.

## O B S E R V A T I O N S.

A prorogation of the Parliament is either by the King's command, and in his presence signified by the Lord Chancellor, or Speaker of the House of Lords, to both Houses—or by writ under the Great Seal, directed to the Lords and Commons—or by Commissioners appointed by a special commission for that purpose.—The first is the usual mode of proceeding, where the Parliament is prorogued at the close of the session.—I do not find any instance where the Parliament has been prorogued by writ, except upon the meeting of a new Parliament after a general Election, and before a Speaker of the House of Commons is chosen: Upon this occasion, when the Members of the House of Commons come to the place appointed for administering to them the oaths, by the  
Lord

Lord Steward or his Deputies, "on their being informed, that the Parliament is to be prorogued by writ, directed to the Lords and Commons, they go directly, without going into the House of Commons, or expecting any message from the Lords, to the House of Peers \*, where the writ for proroguing the Parliament is read †." This is the form of the entry in the Journal of the House of Commons, without expressing by whom, or upon what authority, this information to the Commons is conveyed.—The proroguing by Commissioners, specially appointed for that purpose, is the usual form, when the Parliament meets, from time to time, during the recess.

I have observed before ‡, that, when the Parliament meets on the day to which it has been prorogued, it is irregular for them to proceed to do any business whatever till the cause of summons has been declared, and the session opened by the King, or persons authorized by him, in the House of Lords; and if, from any cause, the King does not come in person (as on the 8th of September, 1690) or send a commission for opening the session, or

\* See the 24th of August, 27th of September, 27th of October, and 29th of November, 1698; 6th of February, 1700; 14th of June, and 6th of September, 1705.—On the 12th of November, 1713, the expression in the Journal is, "And the Members taking notice by the proclamation, bearing date the 18th of October, that the Parliament was to be prorogued by writ, went directly, &c. &c."—See the 10th of December, and 12th of January, 1713; 10th of May, 5th of June, 3d of July, 2d of August, and 4th of September, 1722; 28th of November, and 11th of January, 1727; 13th of June, 16th of July,

and 13th of August, 1734; 25th of June, 6th of August, and 10th of September, 1741.

† It appears from an entry amongst the standing orders of the Lords, That when the Lord Chancellor speaks to the Lords and Commons so assembled, and directs the writ to be read, he speaks uncovered, "in respect that he speaks to the Lords, as well as to the Commons;" and it is so entered in the Commons Journal, 10th of May, 1722, 28th of November, 1727, and 13th of June, 1734. "That the Lord Chancellor stood up, uncovered."

‡ See p. 290.

proroguing the Parliament, the House of Commons ought to do nothing but adjourn to a future day \*.

It has been often supposed †, that it is necessary, ‘by law,’ to give forty days notice of the meeting of Parliament for ‘dispatch of business,’ both at the commencement of a Parliament and after a prorogation. But I apprehend this to be a mistake; it is now indeed determined by the statute, 7th and 8th of William III. chap. 25, “that there shall be forty days between the teste and “returns of the writs of summons:” And this time is, by the uniform practice since the Union, extended to fifty days; but neither that Act, or any other that I know of, prescribes ‡ the time that is necessary to give notice of the meeting ‘for dispatch of business:’ And in fact we see, in a very late instance, the 14th of December, 1730, that a notice of only thirty-eight days ‘was’ given.

When notice has been once given by proclamation, that it is intended that the Parliament shall sit ‘for dispatch of business,’ if it is afterwards found necessary further to prorogue the Parliament, as was the case for several times together in the year 1712, when the Ministers waited for the final ratification of the peace of Utrecht, it does not appear to have been the practice for any further notice to be given §. It is supposed, that all the Members attend in conformity to the first proclamation; and that therefore no further proclamation is necessary.—But notwithstanding that

\* The proceedings of the two Houses, when they met on the 20th of November, 1788, were, from the strange necessity of the case, an exception to this rule.

† See before, p. 274.

‡ Except in the instances, mentioned in

the 26th George III. ch. 107, sect. 95 and 97, in cases of invasion or rebellion.

§ This happened again in November, 1782, when the Ministers expected the preliminary articles of the peace from Paris: and again in November, 1794.



there is no positive law, which requires so long a notice as forty days of the sitting for dispatch of business (and indeed, if such a law was to be made, it might, in some instances, be attended with very great inconvenience, as when in the years \* 1689, † 1707, and 1721, it was found expedient to ‡ prorogue the Parliament for

\* The King prorogued the Parliament from Monday the 21st of October, 1689, to Wednesday, the 23d of October.—The occasion of this very short prorogation, was probably to admit of the moving for and presenting a new “Bill for establishing the “Rights of the Subject,” commonly called “The Bill of Rights.” This Bill had passed the House of Commons in the former session, but had been amended by the Lords; amongst other things, by inserting the name of the Princess Sophia and the heirs of her body, in the Succession to the Crown.—To this amendment the Commons on the 19th of June, 1689, disagreed, *nemine contradicente*.—And the Lords adhering, it became necessary to have a prorogation, to constitute a new session, in order to comply with the rule, as it is expressed in the Lords Protest of 23d of February, 1691, “That, a Bill having been “dropt, from a disagreement between the “two Houses, it is against the known and “constant method of Parliamentary Proceedings, to bring in the same Bill in the “same session.”—See before p. 126 and 291.

† See Bishop Burnet's account of the reason of this short prorogation in 1707, from the 8th to the 14th of April.—History of his Own Times, Vol. II. p. 466; and see the proceedings of the Lords on the 21st and 23d of April, upon the Bill for preventing Frauds in the Scotch obtaining drawbacks—which same Bill had passed the Commons in the former session, and was now sent up again: for the purpose of admitting this

proceeding, the Parliament was prorogued.

‡ On the 21st of October, 1553, the Parliament was prorogued from Saturday to the Tuesday following, though (as appears from the Journal) several Bills were depending, which were necessarily brought in again.—I never could find, from any history, the reason of this short prorogation.—Carte, in his 3d vol. p. 295, assigns a very insufficient one: “That three Bills, to which the Queen “gave the Royal assent on the 21st of “October, being *Acts of Grace*, she would “not intermix other matters with them in “the same session; for which reason the “Tonnage Bill was deferred, and the Parliament prorogued for three days, to “Tuesday, October 24, when the second “session began.” Perhaps it might have been necessary on account of a dispute between the two Houses respecting the subsidy Bill of Tonnage and Poundage.—It appears from the Journals of the House of Commons, that this Bill was passed, and sent up to the Lords, on Saturday the 14th of October; that on the 18th it was sent back from the Lords, “to be reformed in the two last “provisoes, not in the former precedents,” and no further notice is taken of it in this session; but on Wednesday the 25th of October, the second day of the next session, it is again brought into the House of Commons, and passed without objection. If the Commons could not agree to the alterations made by the Lords, and the Lords would adhere to those alterations, I say, perhaps this might suggest the idea of a prorogation,

for a very few days) yet from the almost constant practice since the Revolution, and from a principle of fairness, which requires all due notice to be given, (and that there may be no surprise, but that all the Members may have time to come up, or may not come up to town unnecessarily) I should think it very unadvisable for any Minister wantonly to depart from such a custom; and, unless it appeared to have been done from motives of real necessity, that he deserved the severest reprehension from Parliament.

I cannot find precisely, at what period this practice of giving notice by proclamation, "that the Parliament should meet for "dispatch of business," began\*. Anciently no such notice was customary; the Parliament always met and sat on the day on which it was summoned to meet, and on the day to which it was prorogued. But when it became the practice†, in the reign of Charles

to give the Commons an opportunity of bringing in a new Bill. It is unfortunate, that the Journal of the House of Lords, of this session, is lost; and the rolls of this Parliament, as printed in the 1st volume of the Lords Journals, contain nothing but a list of the Bills to which the Queen gave the Royal assent.—If this conjecture is well founded, it shews how very long ago the House of Commons claimed and exerted their undoubted privilege, of not permitting the Lords to make any amendments whatever in Bills, containing their grants to the Crown.

\* "When the Parliament meets, and sits for dispatch of business, on the day upon which the writs are made returnable, it has not been usual to issue any notice by proclamation: Yet in the Gazette of the 18th of May, 1754, there is an article from Whitehall, "That the King has been pleased to "appoint Commissioners to open and hold the

"Parliament, on the 31st of May, being the "day of the return of the writ of summons." Mr. O.—To which he adds, that "It was "from a particular circumstance, that some "sort of notice was necessary at this time." But Mr. Onslow does not explain what that circumstance was.—The fact was, the Parliament did meet, chose the Speaker, and passed a Bill, in order to make it a Parliament, "that had met and sat," within the meaning of the 6th Queen Anne, chap. 7, and the Regency Bill of the 24th George II. chap. 24, but proceeded upon no matters of general business; and this is expressed, in the King's speech of the 1st of June, 1754, to have been the intention of calling them together at that season.

† On the 17th of May, 1664, King Charles the II<sup>d</sup> said in his speech, on closing the Session, "That he did not intend to bring "them together again till the Month of "November;

Charles II. to make frequent and further prorogations, which made it inconvenient for Members to come up to town when it was not intended that the Parliament should actually sit, it is probable that, to obviate this inconvenience, this mode of giving notice, by proclamation, was first introduced. And yet I cannot find, in the Journals of either House, any proclamation entered in the present form, before the Revolution. The King indeed, in his speech \* on the 9th of May, 1668, says, " I am willing you should adjourn to the 11th of August, and if there be no pressing occasion for your meeting then, I will give you notice by proclamation." In another speech, on the 24th of October, 1670, he says, " Believing that the good of the kingdom will be best provided for when the

" November; yet, because some emergent occasion might fall out, that might make him wish to find them together sooner, he would prorogue them only to August; and before that day, they should have seasonable notice, by proclamation, not to give their attendance, except such occasion should fall out." So on the 31st of October, 1665, when Charles II. prorogued the Parliament that had sat at Oxford, he says in his speech, " It is not probable they should meet till April; but yet, lest he might have occasion for their assistance sooner, he had given orders for proroguing them only till February; and if there should be no occasion for their coming together then, he would, by a proclamation, give timely notice thereof."—See *Lords Journals*, Vol. XI. p. 621 and 701.—In the year 1677, during an adjournment of the Parliament from the 3d of December, to the 15th of January, the King, by a proclamation, dated the 7th of December, " declared himself desirous, in respect to several important matters intended to be debated and considered, to have, on the said 15th of January, a full assembly of the Members of both Houses of Parliament; and

" therefore, with the advice of his Privy Council, thinks fit to require and command the Lords and Commons to give their attendance at Westminster on the said day, in a ready conformity to his Royal will and pleasure."—See *Kennet's History of England*, 3d vol. p. 343.—So on the 22d of November, 1715, both Houses having adjourned, in pursuance of the King's pleasure signified to them, from the 21st of September, to the 6th of October, and from that time to the 20th of October, and the 5th and 21st of November, and the 14th of December; the King issues a proclamation to give notice, " That on the said 14th of December, the said Parliament shall be held and sit for the dispatch of weighty and important affairs." On the 14th of December, the House of Commons meet, (as it is expressed in the Journal) " according to their last adjournment, and pursuant to his Majesty's Royal proclamation for that purpose," and do some business; and then receive a message from his Majesty, for a further adjournment to the 9th of January.

\* See this speech in the *Lords Journals*, Vol. XII. p. 247.

" Houses

“ Houses are fullest, I thought fit, by my proclamation, to summon you all to be here.” But neither of these proclamations are entered in the Journal.

The regular and established practice, however, now is, that the Parliament is, in the course of the recess, prorogued from time to time, by Commissioners authorized by his Majesty, of which prorogations notice is given by proclamation, or by order in Council published in the Gazette \*; and, when it is intended that the Parliament shall actually sit ‘ for dispatch of business,’ notice of this is specified in the proclamation; and that proclamation ‘ generally ’ bears date at least forty days before the day appointed for the meeting.

The measure taken by Charles II. in the year 1667, on the alarm given by the Dutch fleet coming up to Chatham, of calling together the Parliament, on the 25th of July, when they stood prorogued to the 10th of October, ~~was, notwithstanding the opinion of Mr. Prynne, “ who was privately carried to the King, to “ satisfy him, “ that upon an extraordinary occasion he might do “ it ’,”~~ clearly illegal; and, though it was carried in the Council against Lord Clarendon’s opinion, his arguments upon that question were unanswerable †. If it had been then thought absolutely necessary

\* On the 9th of August, 1698, a proclamation was issued to give notice, that the Parliament which was summoned to meet on the 24th of August, would not sit upon that day for the dispatch of business, but should be further prorogued to the 27th of September, and the proclamation further declares, “ That convenient notice shall be given, by “ proclamation, of the time when the Parliament shall be holden and sit for the dispatch of business; to the end that the

“ Members of both Houses may order their “ affairs accordingly.”—Commons Journals, 12th vol. p. 343.

† See, in the Continuation of his Life, p. 422, &c. the substance of Lord Clarendon’s speech on that occasion.—In the 12th and 13th year of Edward IV. 1473, upon the Parliament being prorogued from the 8th of April to the 6th of October next ensuing, an Act passed, which is not in the Statute Book, but is to be found amongst the

necessary to assemble the Parliament, the proper measure was that which Lord Clarendon advised, of "dissolving the prorogued Parliament, and sending out writs for a new one, which might 'regularly' have met, a month before the prorogued Parliament could come together." For, at that time, there was no law in being, which ascertained any particular interval between the teste and return of the writs.

At present, however, this difficulty arising from the separation of Parliament in times of real danger, is removed by a special Act of Parliament. For by the statute of the 26th of George III. ch. 107, sect. 95 and 97, it is enacted, "That in all cases of actual invasion or upon imminent danger thereof, and in all cases of rebellion, or insurrection, it shall be lawful for his Majesty, (the occasion being first communicated to Parliament, if the Parliament shall be then sitting; or declared in Council, and notified by proclamation, if no Parliament shall be then sitting or in being) to order the militia to be drawn out and embodied. And, whenever his Majesty shall cause the militia

the Rolls of Parliament, in the 6th vol. p. 42, No 43, by which it is ordained, "That albeit such prorogation and adjournment be had, yet if, for any urgent cause moving his Highness, it shall be thought to be the same necessary and behovefull, to resume, assemble, and have appearance of this his said Parliament, at any time or place afore the said sixth day of October, that then at his pleasure he may direct his several writs to the Sheriff of every shire of his realm, to make open proclamation in every shire town, that all Lords, Spiritual and Temporal, being Lords of Parliament, and all Knights of Shires, Citizens of Cities, and Burghesses of Boroughs, returned in this present Parliament, personally appear at such place and day as in the said writs of proclamation shall be specified: So always, that every of the said writs be made out 20 days or more afore the said day of appearance limited by the same; and that such appearance be taken and had of like force and effect, as if the King had prorogued this Parliament to the same day and place; and that then the said prorogation and adjournment to the said 6th day of October, be void and of none effect." This record is an additional argument in favour of Lord Clarendon's, and against Mr. Prynne's opinion given to Charles II. in the year 1657; and it is rather extraordinary that Prynne was not aware of this precedent, as he himself had, but ten years before, in the year 1657, published an abridgment of it in his edition of Sir Robert Cotton's Records.

“ to be drawn out and embodied as aforesaid, if the Parliament  
 “ shall then be separated, by such adjournment or prorogation,  
 “ as will not expire within fourteen days \*, his Majesty may and  
 “ shall issue a proclamation for the meeting of the Parliament  
 “ within fourteen days; and the Parliament shall accordingly  
 “ meet and sit upon such day, as shall be appointed by such pro-  
 “ clamation, and continue to sit and act, in like manner, to all  
 “ intents and purposes, as if it had stood adjourned or prorogued to  
 “ the same day.”

The different effects of a prorogation and an adjournment are, that, the first concluding the session, all Bills, or other proceedings depending in either House of Parliament, in whatever state they are, are entirely put an end to †, and must, in the next session be instituted.

\* This case happened in 1792; the Parliament stood prorogued to the 3d of January, 1793; but on the 1st of December preceding, the King issued a proclamation, notifying that he had ordered part of the militia to be drawn out and embodied; and at the same time issued another proclamation, for the assembling of the Parliament on the 13th of December. The Parliament met accordingly on that day. These proclamations are inserted at the end of the 47th vol. of the Commons Journal, p. 1092.

† The only exceptions to this rule, are, the proceedings upon impeachments, and upon writs of error, or appeals, in causes before the House of Lords.—When an impeachment has been carried up to the Bar of the House of Lords, it is not abated by any prorogation, or even dissolution of Parliament; but may be carried on from Parliament to Parliament, till it is concluded.—There have been also three instances, where this rule has been set aside by express Acts of Parliament.—Two, in the case of Sir Thomas Rumbold, by the 22d George III.

ch. 59, and by the 23d George III. ch. 59; and the other in the case of Mr. Hastings, by the 26th George III. ch. 96.—These extraordinary interferences of Parliament were grounded, upon what is the Common Law in proceedings upon impeachment, where that impeachment has got to the length of being received in the House of Lords.—On the 29th of April, 1624, an attempt was made, to pass a general law, to enact “ That all the Bills, that pass not “ this session, should remain in the state they “ should be left in, till the next session.” But this proposal was opposed by Sir Edward Coke, and several other Members, who stated it “ to be against all former precedents; that innovations in Parliaments “ were most dangerous; and that they “ therefore desired to walk in the steps of “ their forefathers.”—There is indeed one instance on the Records of Parliament, where this rule, without any special law, was infringed upon, viz. on the 23d of May, 1539, when, upon a prorogation, the following entry is made in the Lords Journal, “ Memorandum,

instituted again, as if they had never been begun.—Whereas upon an adjournment, every proceeding remains entire, and may at the meeting after the recess, be taken up in the state, and at the period, where it was left.

“ Memorandum, Quod concordatum est, inter Proceres et Communes, quod omnes hujusmodi Actus et Billæ, quæ per illos sunt expeditæ, aut adhuc remanent indiscussæ, in eodem permanebunt statu, quo sunt presente die, hujus Parliamenti prorogatione in aliquo non obstante.” But, besides that, as Sir Edward Coke says, this was a dangerous innovation, the proceedings of that Parliament are not entitled to any very particular respect, which made a Law, “ That the proclamations which the King, with the advice of his Council, should set forth, under such pains and penalties as to him should appear necessary, shall be observed, as though they were made by Act of Parliament.” Statute 31st Henry VIII. ch. 8.—One of the Bills then was depending at this time, and which was continued *in statu quo*, by this concordatum between the two Houses, was “ the Bill for the suppression of Monasteries, Abbies, and Religious Houses, and vesting their estates and property in the King.”—This Bill had been presented by the Lord Chancellor Audley, on the 13th of May; had passed the Lords on the 19th; was sent back from the Commons on the 23d of May, but had not received the Royal assent.—The booty, held out by this Bill, was probably the immediate cause of this very extraordinary and irregular proceeding.—On the 11th of March, 1672, the Lords refer to their Committee of Privileges to consider, “ Whether an appeal unto this House, either by writ of error, or by petition, from the proceedings of any other Court, being depending, and not determined in one session of Parliament, continue in *statu quo* unto

“ the next session, without renewing the writ of error or petition?” On the 29th of March, 1673, the Committee report a great number of precedents, from the reign of Edward I. with their opinion, upon the consideration of these precedents, “ That all businesses, wherein their Lordships act as a Court of Judicature, and not in a legislative capacity, depending in one Parliament or session of Parliament, have been continued to the next session of the same Parliament; and the proceedings thereupon have remained in the same state, in which they were left, when last in agitation.” The House approve of this opinion, and order it accordingly.—Notwithstanding this resolution, a similar doubt is entertained a very few years after, whether petitions of appeal presented in the last Parliament be still in force; and the Lords on the 14th and 17th of March, 1678, again refer this question to the Committee of Privileges, who report their opinion on the 18th, “ That in all cases of appeal and writs of error, they continue and are to be proceeded on in *statu quo*, as they stood at the dissolution of the last Parliament, without beginning *de novo*; and that the dissolution of the last Parliament doth not alter the state of the impeachments brought up by the Commons in that Parliament.”—On the 19th, the House concur with the Committee in this opinion—and the present practice of the House of Lords continues conformable to that resolution.—See in the Lords Journal of the 23d of January, 1734, the order for hearing the causes which were left unheard in the preceding Parliament.

## K I N G.

V. *Royal Assent to Bills.*

1. **I**N the 3d volume of the Parliamentary History, p. 298, there is cited from the Journals of the House of Lords \* a preamble to the Act passed in the year 1553, for reversing the Duke of Norfolk's attainder, in these words: "And may it please your Highness, that it be declared, by the authority of this present Parliament, that the law of this realm is, and always has been, that the assent and consent of the King of this realm, to any Act of Parliament, ought to be given in his own presence, being personally present in the Higher House of Parliament, or by his letters patent under his Great Seal, assigned with his hand, declared and ratified in his absence, to the Lords Spiritual and Temporal, and the Commons, assembled together in the Higher House, according to the statute made in the 34th year of the reign of Henry VIII."

2. On the 1st of June, 1621, Sir Edward Coke says, "When Bills have passed both Houses, the King's Royal assent is not to be given, but either by commission, or in person, in presence of both Houses †."

\* The Journals of the House of Lords, of all this first Parliament of Queen Mary, are missing: I cannot therefore guess to what the Parliamentary History refers.—I have however examined the original Act itself, and find this preamble there.

† Vide a Note under title, "King sends

Black Rod for the House to attend him."—See also a Note in the third volume of this work, under title "Proceedings of the Lords and Commons where their rights are concerned," with respect to the mode of giving the Royal assent to a Bill of Pardon.



3. On the 4th of December, 1678, Charles II. having refused to pass the Militia Bill, sends a message to the House of Commons, declaring, "that he will readily assent to another Bill, under certain limitations." A Committee is immediately appointed, "to inspect precedents, touching the methods and proceedings of Parliament in passing of Bills;" but I do not find that they made any report.

4. On the 24th of March, 1680, notice is taken, that a Bill which had passed both Houses, had not been offered to the King for the Royal assent \*. And the next day a conference is desired with

\* On Friday, the 29th of January, 1768, the King came to the House of Lords to pass the Bills ready for the Royal assent, amongst which were some that came originally from the House of Commons, to which the Lords had agreed; but the message, signifying the agreement, could not be received by the House of Commons, as the Speaker could not collect forty Members, to enable him to take the Chair; the Speaker therefore sent to the House of Lords, to desire that those Bills might be stopt, and not offered; notwithstanding which, the Clerk was directed to proceed, and the Bills accordingly received the Royal assent. The Speaker (Sir John Cust) at his return, was very angry, and said, that on such another occasion, he would, at the Bar, acquaint the King and Lords, that no message had been brought to the Commons, of the Lords having agreed to the Bill: Lord Marchmont and Lord Sandys, both Lords of great experience in Parliament, replied, that when both Houses had passed a Bill, it was not in the power of any person to withhold it from being offered for the Royal assent, or (as they expressed themselves) to take it off the table; and I believe they were right. The message

to the Commons is only matter of ceremony, and not an essential form to the passing of a Bill, except they are Bills of Supply; there, the Commons claiming a right to present them by their Speaker, he would certainly be justified in taking notice at the Bar of the House of Lords of this omission. But as to other Bills, the message of agreement is a form between the two Houses, which they ought to observe towards each other, but is not an essential one: And it would be dangerous doctrine, to say that, when both Houses had passed a Bill, the power of withholding that Bill from being offered for the Royal assent, should lie any where; especially that it should depend on the Commons not receiving a message, from which they were precluded only by an order of their own. The Speaker, very unnecessarily I think, desired leave of the House, to enter this on the Votes, so that the message from the Lords might appear to come before the message from the King. Mr. Dyson was clearly of opinion that the proceeding of the Lords was regular; and that the Speaker should have gone up, and entered the Lords message afterwards, without making the alteration; A similar instance occurred on the 7th of July,

with the Lords on this subject: This conference is held upon the 26th of March, and the Duke of Monmouth reports to the Lords, what was offered upon that occasion by the Commons\*. The matter of this conference is ordered by the Lords to be taken into consideration on the 29th of March, but the sudden dissolution of the Parliament, on the 28th, put an end to all further enquiry into this business.

5. On the 24th of February, 1691, and 14th of March, 1692, King William and Queen Mary refused the Royal assent to three Bills†, that had passed both Houses of Parliament.

1794.—and the message of agreement from the Lords was entered in its proper place. Indeed I suppose, that, when both Houses have passed a Bill, it is not in the power of the Clerk of the House of Lords to withhold inserting it amongst those that are offered for the Royal assent, without an express order of the House; and if the Lords should give such an order without sufficient reason, it would be an infringement of the rules of Parliament.—See a Note, in a subsequent part of this volume, under title “King sends Black Rod for House to attend him.”—On the 7th of March, 1785, a commission was made out, and passed the Great Seal, for giving the Royal assent to several Bills agreed upon by both Houses; but, by some mistake, made either by the Clerks of the House of Lords, or at the Secretary of State’s office, (for they charged it upon each other) the Malt Bill, which had passed both Houses, and the agreement to which, by the Lords, had been communicated to the Commons, was left out.—As soon as this was discovered, from the list of Bills ready for the Royal assent, which is always sent to the Speaker, notice of this error was given to the Lords, and a desire expressed that it might be rectified by issuing

a new commission; and not executing the commission which was then ready.—Accordingly, no proceedings were had upon the first commission; but another commission, in which the Malt Bill was included, was prepared, and passed the Great Seal, and the Bills named in it received the Royal assent the next day, the 8th of March.

\* See in the Lords Journal of the 26th of March, 1681, the Commons reprehension of this violation of the Constitution of Parliaments, and their proposal for a Committee of both Houses to be appointed for the examination of this matter.

† One of these was “An Act for ascertaining the Commissions and Salaries of the Judges.”—Another was, “An Act for the frequent meeting and calling of Parliaments.”—It is remarkable, that both these laws were amongst those, which the House of Commons, on the 8th of February, 1688, had (before they offered the Crown to the Prince and Princess of Orange) resolved ought to be passed, “For remedy of several defects and inconveniences; and towards the making a more firm and perfect settlement of the religion, laws, and liberties of this kingdom.”

6. On the 7th of March, 1692, several Lords are ordered to attend his Majesty, to acquaint him that a Bill had passed both Houses, "For punishing Mutiny and Desertion in the Army;" and that the penalties therein contained do "commence from the 10th day of this instant March:" notwithstanding this message the Royal assent is not given till the 14th of March.—So on the 9th of April, 1696, both Houses join in an Address to the King, to acquaint him, "That a Bill is ready for the Royal assent, in which the penalties take place from to-morrow." The King returns an answer, "That he intends to be at the House of Peers to-morrow morning."

7. On the 25th of January, 1693, the King refuses his assent to a Bill, touching free and impartial proceedings in Parliament. The House of Commons immediately appoint a Committee of the whole House, "to consider of the state of the kingdom."—See the report on the 26th of January, and the representation which followed it, on the 27th.

8. On the 10th of April, 1696, the King having refused the Royal assent to a Bill \*, a motion is made, on the 14th, for censuring the advisers of this measure, "as enemies to the King and kingdom," but passed in the negative, 219 to 70.

9. On the 12th of June, 1701, King William refuses the Royal assent to a Bill "for improving a piece of ground in Saint Martin's in the Fields."

10. On the 23d of December, 1708, the Royal assent is given by Commissioners to a Bill agreed upon by both Houses.—The

\* See in the Lords Journals the form of this proceeding—and on the 11th of March, 1707, where the Queen refuses the Royal assent to a Scotch Militia Bill.

Parliament had been opened on the 16th of November preceding, by virtue of a Commission from the Queen.—When the Commons come, on the 23d of December, to the Bar of the House of Lords, the Chancellor says, “ Her Majesty not thinking fit yet to be personally present in Parliament, has been pleased to permit the commission, read to you at the opening of this Parliament, to continue in force.—And, for greater certainty, to issue another commission for the giving her Royal assent to the Bill agreed upon by both Houses \*.”

## O. B S E R V A T I O N S.

The statute alluded to in the preamble of the Act for reversing the Duke of Norfolk's attainder, is the 33d of Henry VIII. chap. 21, intituled, “ Queen Catherine, and her complices, attainted of high treason:” The third section is as follows: “ Be it declared ” by the authority of this present Parliament, “ That the King's Royal assent, by his letters patent under the great seal, and signed with his hand †; and declared and notified,

“ in

\* See this commission in the Lords Journal.—The Lord Chancellor gives the Royal assent, by virtue of the two several Commissions.—See a similar proceeding on the 26th of January, 1708, and upon several other occasions in that Session of Parliament; and also on the 5th of January, 1754, the 21st of May, 1768, and several instances in the Session of 1789.

† All the commissions and letters patent for giving the Royal assent to Bills, agreed

upon by both Houses, recite, “ Whereas we have seen, and perfectly understood an Act, agreed upon by you, our loving subjects the Lords Spiritual and Temporal, and the Commons in this our present Parliament assembled, and indorsed by you, as hath been accustomed, &c. &c.” This recital, which shews the necessity of the Bill being communicated to the King, after it has been agreed upon by both Houses, clearly explains, what might otherwise have been

“ in his absence, to the Lords Spiritual and Temporal, and to the  
 “ Commons, assembled together in the High House, is, and ever  
 “ was, of as good strength and force as though the King’s person  
 “ had been there personally present, and had assented openly and  
 “ publicly to the same.” And in section the fourth, “ Be it  
 “ also enacted, That this Royal assent, and ‘ all other Royal  
 “ ‘ assents,’ hereafter to be so given by the Kings of this realm,  
 “ and notified as is aforesaid, shall be taken and reputed good  
 “ and effectual, to all intents and purposes, without doubt  
 “ or ambiguity; any custom or use to the contrary notwithstanding  
 “ ing \*.”

It appears from the Parliamentary History, and from Dyer’s Reports, page 93, that one of the grounds alleged for the reversal of this attainder was, that Henry VIII. had ‘ not signed’ the

been matter of doubt; “ Why the Commissioners, who, in several instances had been, by a prior commission, authorised not only to begin and hold the Parliament, ‘ but to do every thing which for us, and by us, shall be there to be done,’ could not ‘ under that commission have authority to give the Royal assent to any Bill.” And as the former commission is not revoked, this shews why the Lord Chancellor, in 1708, 1754, 1768, and the other instances, gives the Royal assent by virtue of both commissions.—Lord Clarendon says, “ That when it was proposed, on Charles the First going into Scotland in 1641, that he should leave a commission with some persons, to pass such acts, as should be prepared and be agreed to by both Houses in his absence, it was found, that no such commission could be legally granted, to give the Royal assent to any acts, that were not consented to by both Houses, at the date of the commission.”

History of the Rebellion, Vol. I. p. 218. Book 3d.—When on the 8th of August, 1754, a second prorogation is to be had, the commission, which appoints the Commissioners for this purpose, first revokes the former commission of the 22d of May, under which the Parliament had met, and had been prorogued on the 5th of June.—What the reason for this was, does not appear, unless that it was thought proper to appoint different and a larger number of Commissioners, than had been in the former commission.

\* The form of giving the Royal assent to Bills, agreed upon by both Houses, has been, for a considerable time past, by the Clerk of the House of Lords, either the King present, or in the presence of Commissioners authorised by him.—But see in the Lords Journal, on the 22d of March, 1620, and the 11th of July, 1625, where Bills are passed by letters patent.

letters patent, for giving the Royal assent to this Act, with 'his own hand,' but that his stamp had been set to them by one William Clerk \*. And the question of the validity of this Act of Parliament, 'upon this ground,' was brought and argued before all the Judges at Serjeant's-Inn, by the persons who had purchased the lands of the attainted Duke; but it does not appear that the Judges gave any opinion upon it †.

Bishop Burnet gives the following account of the Bill, which in 1680 was not offered for the Royal assent ‡.—“ There was a severe Act passed in the end of Queen Elizabeth's reign, by which those who did not conform to the Church, were required to abjure the kingdom, under pain of death; and for some degrees of non-conformity, they were adjudged to die, without the favour of banishment. Both Houses passed a Bill for repealing this Act; it went, indeed, heavily in the House of Lords; for many of the Bishops, though they were not for putting that law in execution, which had never been done but in one single instance, yet they thought the terror of it was of some use, and that the repealing it might make the party more info-

\* See in the 15th vol. of Rymer's *Fœdera*, p. 100, the warrant dated the 31st of August, 1546, by which Henry VIII. authorised Sir Anthony Denny, John Gate, and William Clerk, to sign in his name, “ omnia & singula Warranta, Billas, Donationes, Concessionones, Dimissionones, Pardonationones, Litteras missivas, Commissionones, & omnia alia Scripta, & Minuta quovismodo per nos, sine nomine nostro, fienda.” And the reason alledged for giving this extraordinary power is, “ quia nos, sine corporis nostri gravamine & periculo, manu nostra propria, prout mos est, signare nequimus.”

‡ There is another instance where the validity of an Act of Parliament came in question before all the Judges; which is cited from the year book of the 33d Henry VI. by Petyt in his *Jus. Parl.* page 25. The difficulty consisted in this, “ That the Lords had made some addition to the Bill, after it came up from the Commons; and it did not appear, that it had been carried down to the Commons again for their assent to the addition.” See the opinion of the Judges, given by Fortescue, who was then Chief Justice of the King's Bench.

† See the History of his Own Times, Vol. I. p. 494.

“lent. On the day of the prorogation, this Bill ought to have  
 “been offered to the King; but the Clerk of the Crown, by the  
 “King’s particular order, withdrew the Bill\*. The King had  
 “no mind openly to deny it, but he had less mind to pass it, so  
 “this indiscreet method was taken, which was a high offence in  
 “the Clerk of the Crown†.”

This was certainly a very shuffling proceeding in the King; for, if he had no inclination to pass the Bill, he clearly had the right (which he had exercised but two years before, in the case of the Militia Bill, and what he himself, and his predecessors had done in a variety of other instances) to refuse the Royal assent. For there is no doubt, though it is now almost a century since it has been exercised‡, but that this is, and always has been, an inherent and constitutional prerogative in the Crown§: It ought, however, to

\* See in the Lords Journal of the 27th of July, 1663, the proceedings upon a Bill “for the better observation of the sabbath,” being lost from the Table.—This Bill had been agreed to by both Houses, and was ready for the Royal assent.

† See the debate upon this subject in Grey’s Debates, Vol. VIII. p. 295 and 300: and see in the Lords Journal of the 20th of March, 1681, the manner, in which the Commons express their sense “of this great  
 “violation of the constitution of Parliaments,  
 “in passing laws;” and their desire to appoint a joint Committee of both Houses, “that this matter may be strictly enquired  
 “into, and information had, who are guilty  
 “of this offence, and who the accomplices  
 “therein; that they may receive such con-  
 “dign punishment, as will deter all persons  
 “from the like practice for the future.” This was on Saturday; the Lords appoint Tuesday for taking this matter into con-  
 sideration; but on Monday, Charles the Second comes to the House of Lords, and, after a very short speech, commands the Chancellor to dissolve the Parliament.—See Bishop Burnet’s account of this transaction, History of his Own Times, Vol. I. p. 499.

‡ When I used this expression, in the former edition of this Work, I confess I was not aware of an instance I have since met with, that occurred on the 11th of March, 1707; when Queen Anne refused the Royal assent to “a Bill for settling the Militia of  
 “that part of Great Britain called Scot-  
 “land.”

§ James I. in a speech on the 27th of May, 1606, at the close of the session, mentions it as a special token of his grace and favour, that he has given the Royal assent to all the Bills passed by both Houses; “it  
 “being a matter, he says, in former times  
 “unusual to pass all Acts, without any ex-  
 “ception.”

be exercised with great discretion; as the King is never supposed to act, in his political capacity, but by the advice of Counsellors: The refusing the Royal assent to a Bill, agreed upon and offered to the King by both Houses of Parliament, is, in fact, preferring the advice of his Privy Council, or of some of his Ministers, or of some other person, to the advice of the Great Council of the nation assembled in Parliament\*.

There was a very long debate † upon King William's refusing the Royal assent to the Bill "touching free and impartial proceedings in Parliament;" in which (however angry the House of Commons might be with the persons who had advised this measure, and whom, as appears from their resolutions ‡, they voted to be "enemies to their Majesties and the kingdom,") nobody presumed to question 'the right' of doing it; and the representation, drawn

\* Lord Clarendon, observing upon this subject, says, "In truth it is not only lawful for the Privy Council, but their duty, to give faithfully and freely their advice to the King, upon all matters concluded in Parliament, to which his Royal assent is necessary, as well as upon any other subject whatsoever. Nay, a Privy Counsellor, as such, is bound to dissuade the King from consenting to that which is prejudicial to the Crown; at least to make that prejudice manifest to him, though as a private person, he could wish the matter consented to. And therefore by the constitution of the kingdom, and the constant practice of former times, all Bills, after they had passed both Houses, were delivered by the Clerk of the Parliament to the Clerk of the Crown; and by him brought to the Attorney General, who presented the same to the King, sitting in Council; and having read them, declared what alterations were made by those Bills

"to former laws; and what benefit or detriment, in profit or jurisdiction, would accrue thereby to the Crown; and then, upon a full and free debate by his counsellors, the King resolved upon such Bills as were to be enacted into laws; and respite the others, that he thought not fit to consent to. As this hath been the known practice, so the reason is very visible,—That, the Royal assent being a distinct and essential part towards making a law, there should be as much care taken to inform the understanding and conscience of the King, upon those occasions, as theirs, who prepare the same for his Royal assent." *History of the Rebellion, Vol. I. p. 157, Book the 3d.*

† See Grey's Debates, Vol. X. p. 375.

‡ See these resolutions, and the representation of the House of Commons upon this subject, on the 26th and 27th of January, 1693, with the King's answer on the 31st of January, in the Appendix to this vol. No 6.



up on that occasion, puts this matter upon the proper and constitutional ground, in praying his Majesty, "that, for the future, he will be graciously pleased to listen to the voice of Parliament, and not to the secret advice of particular persons, who may have private interests of their own, separate from the true interest of the King and the people \*."

It was formerly a matter of great doubt, whether (as we have seen that the Royal assent to a Bill, passed by both Houses, is necessary to constitute a session) the Royal assent, when given, did not conclude the session: As long ago as the 21st of November, 1554, on a question asked in the House, "Whether, upon the Royal assent, the Parliament may proceed, without any prorogation?" it was agreed by voices, "that it may." There is also a debate upon this subject, in the Journal of the 7th of March, 1620, from which it appears, that the ablest parliamentary men of that time had not formed a clear and decisive opinion upon it: Even Mr. Glanville says, "Though I think the law to be, that the Royal assent to a Bill, without a prorogation, endeth not the session; yet to avoid all question, it is best to have a proviso in the Bill."—On the 31st of May, 1621, the Lords passed a Bill in a very extraordinary manner, having brought it in, and read it thrice in the same day; the purport of which was, "that the session should not determine by his Majesty's Royal assent to Bills," but it does not appear, that it passed the House of Commons†. In the year 1625, however, a Bill to this effect did pass both

\* In the Address, as reported from the Committee appointed to prepare it, there was the following very invidious insinuation, "This measure, the Commons can impute to no other cause, than your Majesty's being unacquainted with the Constitution

"of Parliament." These offensive words were left out upon the report, without a division.

† Sir Edward Coke says, upon this question, "The Royal assent doth not make a session, unless the Lord Chancellor doth say,

both Houses, and on the 11th of July received the Royal assent\*. —So in the Parliament called by Cromwell, in the year 1656, it was enacted, “that the passing of any Acts in this session, shall not “be any determination of the said session †.” This question is now no longer matter of doubt; the uniform practice of above a century has decided, that nothing concludes a session, but a prorogation, or dissolution of the Parliament ‡.

It

“say, at the passing of the Royal assent, “that this shall be a session or prorogation “of Parliament; but, if he say no such thing, “then it is to be no session.”—Parliamentary Debates, 1620-1, Vol. II. p. 137.

\* But in the passing this Bill, great doubts were conceived of the expediency of it.—On the 6th of July, 1625, after the Bill had been read a third time, a Committee was appointed, of Mr. Glanville, Sir Robert Phelps, and all the Lawyers of the House, to consider it; and the same day, Mr. Glanville “reports a dislike of it.”—On the 7th of July the Bill was amended, and passed the House of Commons.

† See this Act in Scobell’s Collection, p. 371.—See also the 22d and 23d of Charles II. chap. 1.

‡ The form of giving the Royal assent to Bills, which have passed both Houses, is expressed in the old French Language, “*Le Roy le veut*,” or “*Soit fait, come il est désiré*,” or, “*Le Roi remercie ses bons Sujets, accepte leur Benevolence, et ainsi le veut*,” according to the subject matter of the Bill. By an Act passed during the interregnum, and which is printed in Scobell’s Collection, Anno 1650, ch. 37, it is enacted, “That all “law proceedings shall be in English.”—See in Whitelock’s Memor. p. 460, the speech he made on that occasion.—The form of giving the assent to Bills was accordingly altered, during the Protectorate of Crom-

well; for on the 1st of October, 1656, it is resolved, “That when the Lord Protector “shall pass a Bill, the form of words to “be used shall be these, *The Lord Protector doth consent*.” See also on the 14th of October, 1656, the report of Lord Chief Justice Glynn, of the form of words to be used, and entered on a Bill, that has passed the Parliament, “*Let this Bill be presented to the Lord Protector, for his consent*.” See upon the 27th of November following, the manner of the Protector’s sending for the Parliament into the painted chamber, where he gave his *consent* to several public and private Bills.—On the 9th of June, 1657, when Cromwell gives his consent to two Bills of Supply, he adds, “Understanding it “hath been the practice of those, *who have “been Chief Governors*, to acknowledge, with “thanks to the Commons, their care and “regard for the public, *I do very heartily and “thankfully acknowledge their kindness therein*.”—On the 24th of March, 1706, the House of Lords, adopting the good sense of these provisions, pass a Bill, “for abolishing “the use of the French tongue in all proceedings in *Parliament*, and *Courts of “Justice*.” This Bill was read a second time in the House of Commons on the 5th of April, 1707, and committed, but was never reported from the Committee.—The Bill directed, “That instead of (*Le Roy le “Vult*) these words be used, the King “answers

It has been a very common practice, in Bills even of importance\*, to enact, that the time, when the operation of the Bill shall commence, shall be, "from and after the passing of the Act." This period, in common acceptation, has been generally understood to mean, the time and date, when the Bill shall receive the Royal assent. There have however, always been doubts upon this construction of the meaning of those words; because, it has been held, that, where no specifick day is mentioned, the Royal assent† has always a reference to the first day of the session; and that therefore, by this fiction of law, the operation of a Bill may be made to take effect before the in-

" answers (*Be it so*): Instead of (*Soit fait come il est désiré*) these words be substituted "*(Be it as is prayed)*: Where these words "*(Le Roi remercie ses bons sujets, accepte leur Benevolence, & ainsi le Veult)* have been used, it shall hereafter be (*The King thanks his good subjects, accepts their benevolence, and answers, Be it so*): Instead of (*Le Roi s'avisera*) these words (*The King will consider of it*) be used."—And the Bill also directed, "That the entry of the order for the delivering any Bills to the Lords or Commons, or the entry of their consent, should, for the future be in the English tongue, and not in the French.—And that in all Parliamentary proceedings, on the proceedings in any Court of Law or Justice, the French tongue shall not be hereafter continued, but the English tongue shall be used in its place."—Why this Bill was rejected by the Commons; or why its provisions, with respect to proceedings in Parliament, were not adopted, in an Act which afterwards passed in the year 1731, "That all proceedings in Courts of Justice, should be in English," I never heard any reason assigned. See that statute, 4th George II. chap. 26.

\* See the 29th George II. ch. 8. ch. 11.

33d Geo. II. ch. 2.—1st Geo. III. ch. 17.—2d Geo. III. ch. 20. et passim.—And see the 30th Geo. II. ch. 27. and 37.—and 31st Geo. II. ch. 13, and 34.—and 33d Geo. II. ch. 14; where the Legislature give a certain number of days *after the passing of the Act* for the meeting of Commissioners who, in certain Bills, had been appointed to meet on days, previous to the day, on which such Bills received the Royal assent.

† See upon this subject Grey's Debates, Vol. I. p. 368, on the Lords amendments to Sir J. Coventry's Bill.—See also the 19th April, 1695, where the Lords send down a Bill to declare the commencement of an Act, that had passed, to be from the day that it had received the Royal assent.—The Bill recites, "That whereas an Act had passed, in which no certain time is mentioned upon or from which the same should commence, by means whereof the said Act may be construed to be of force from the first day of the Session, which, if so, might draw into question certain sentences and decrees in the Court of Admiralty, It therefore enacts, That the said Act was not intended to commence, nor shall be construed to commence or take effect till the day on which the same did pass the Royal assent."

tended period ; by which anticipation, persons may incur penalties, enacted by an *ex post facto* law ; and to which they were not intended by the legislature to be made subject. This interpretation of the law, is, I believe, certainly just, where no time at all is mentioned, or period described, from which the Act shall commence ; but, it is by no means so clear \*, where the commencement is declared to be, “ from and after the passing of the Act,” that is “ from and after the day on which the Act shall receive the “ Royal assent ;” because that period is to be ascertained by the record of the Journal of the Lords, and may, upon the doubt conceived, be certified by the Clerk of the Parliaments. The safer mode however is, which obviates all doubts, to specify a certain day in the Bill, on which the operation of the law shall take effect.

\* It has however been determined, by the Court of King’s Bench, in the case of *Latlefs and Patten, v. Holmes*, Easter term, 32d Geo. III. and by the House of Lords in the case of the Attorney General *v. Panter*, in 1772, that the law is, that the words “ after the passing of the Act,” have a reference to the first day of the session.—Both these determinations, in the instances in which they were made, had the effect of an *ex post facto* law ; and were attended with great hardship and apparent injustice to the parties concerned ; but the Court of King’s Bench, in 1792, thought themselves bound by the former decision of the House of Lords in

1772, who acted, in that instance, on the opinion of all the Judges.—See the case of *Latlefs v. Holmes*, reported in the Term-Reports by Durnford and East.—The absurdity of this doctrine however, induced the legislature, to pass an Act, in the session 1793, brought into the House of Lords by Earl Stanhope, which enacts, “ That where it is “ said, The Act shall be in force from and “ after the passing of the Act—this shall be, “ from the day on which it shall receive the “ Royal assent.” By this Bill, much injustice, and many hardships, which attended the former fiction of the law, will be done away.

## K I N G.

VI. *Is not to take Notice of Business depending.*

1. **O**N the 16th and 18th of June, 1607, is a proceeding on a petition for executing the laws against recusants; which, Mr. Speaker says, "the King had taken notice of;" and it was urged, not to have the petition read: To this it was answered, "that this would be a great wound to the gravity and liberty of the House;" and on Mr. Speaker's replying, "that there be many precedents, in the late Queen's time, where she restrained the House from meddling in petitions of divers kinds," a Committee is appointed, "to search and consider of such precedents, as well of ancient as later times, which do concern any messages from 'the sovereign Magistrate,' King or Queen of this realm, during the time of Parliament, touching petitions offered to the House of Commons." On the 18th, the petition, by the King's consent, is read; and it is set down, "that his Majesty hath no meaning to infringe our privileges by any message; but that his desire is, we should enjoy them with all freedom."

2. On the 12th of November, 1640, upon Mr. Comptroller saying, "that his Majesty taking notice, &c." it was observed, the great inconveniency that might fall upon the House\*, if his Majesty should be informed of any thing that is in agitation in this

\* On the 14th of May, 1621, Mr. Alford says, "It is an ancient order in both Houses of Parliament, that whilst any thing is in debate in either of these Houses of Par-

liament, the King should not be acquainted with it, till the House had taken some course in it." Parliamentary Debates, in 1620-1, Vol. II. p. 67.

House, before it is determined; and it was moved, that some course might be taken for preventing this inconvenience.

3. On the 14th of December, 1641, the King, in a speech to both Houses, taking notice of a Bill 'then depending,' about pressing of soldiers, both Houses immediately resolve, "that the fundamental privileges of Parliament have been broken, by the King's taking notice of a Bill that is passing, before it be represented unto his Majesty by the consent of Lords and Commons." And, after a conference held, both Houses agree upon a declaration, petition and remonstrance\*, to be presented to his Majesty on this subject; to which the King returns an answer on the 20th of December.

4. On the 3d of January, 1666, the Lord Anglesey having, at a conference acquainted the Commons, "that, instead of a Bill,

\* See this remonstrance, and the proceedings, in the Appendix, N<sup>o</sup> 7.—It appears from Lord Clarendon, that Charles the First was persuaded to take this imprudent step, by Mr. St. John, then Solicitor General, (who, as he was secretly a favourer of the republican party, probably gave this advice to draw the King into difficulties) and that the very expressions of the King's speech were dictated by him.—So upon a former occasion, similar to this, "Whilst the Bill for the attainder of the Earl of Strafford was depending in the House of Lords, the Lord Say persuaded the King to go to the House of Peers, and sending for the House of Commons, to declare, that he could not, with the safety of a good conscience, ever give his consent to this Bill.—This advice, the King conceiving the Lord Say's intentions to be sincere, suffered himself to be

guided by.—But whether that Lord did did in truth believe, the discovery of his Majesty's conscience in that manner would produce the effect he foretold; or whether he advised it treacherously, I know not; but many who believed his will to be much worse than his understanding, had the uncharitableness to think, that he intended to betray his Master, and to put the ruin of the Earl out of question." Clarendon's Hist. of the Rebel. Vol. I. p. 200, 201, and 258, Book 3d and 4th.—Whoever considers the fatal consequences to the King's measures from these two rash proceedings, and the part which the Lord Say, and Mr. Solicitor General St. John, took in the subsequent commotions, can have little doubt, upon what motives they were induced to suggest their advice to his Majesty.

" which.

“ which the Commons had sent to the Lords, the Lords proposed drawing a petition to the King, for a commission for taking the accompts upon oath.” The Commons resolve, “ that this proceeding, of going by petition to the King, whilst a Bill is depending, is unparliamentary, and of dangerous consequences.”—See the reasons on the 8th, and in the Lords Journals of the 12th, 18th, and 24th of January.—See Grey’s Debates, Vol. I. p. 5.

5. On the 26th of February, 1757, the King having, in a message to the House of Commons, taken notice of what was said the day before by a Member in his place, a special entry\* is ordered to be made, that this case may not be drawn into precedent, to the infringement of the privileges of the House of Commons.

6. On the 17th of December, 1783, the House come to a resolution, “ That it is now necessary to declare, that, to report any opinion, or pretended opinion, of his Majesty, upon any Bill, or other proceeding, depending in either House of Parliament, with

\* This entry is as follows :

“ The mention made in the message, of an application being made to this House, by a Member of the House, in his place, was much excepted to in the House ; being conceived that it might affect, although not so intended, the privilege of the House, with regard to freedom of speech in their debates and proceedings ; and forasmuch as the maintaining of that privilege must ever be of the utmost consequence to the House, the House did direct, that this special entry should be made in the Journal, lest at any time hereafter this case should be endeavoured to be drawn into precedent, to the infringement of so important and essential a claim and right of the House.”

This entry is one proof, amongst many others, of Mr. Onslow’s great attention to the preservation of the privileges of the House of Commons. It could not have been a very pleasing circumstance to Mr. Pitt, who was then Secretary of State, and who drew the message, and brought it to the House, to have this mark put upon the conduct of a measure which he advised.—No respect, however, for the personal character of that great Statesman, or for his rank or office, nor any other consideration, could prevail upon Mr. Onslow to let pass, without observation, a circumstance, which, though not at that time intended, might hereafter be urged as a precedent for the King’s taking notice of the speeches of Members of the House of Commons.

“ a view

“ a view to influence the votes of the Members, is a high crime  
“ and misdemeanour, derogatory to the honour of the Crown, a  
“ breach of the fundamental privileges of Parliament, and subver-  
“ sive of the constitution of this country \*.”

## O B S E R V A T I O N S.

It is highly expedient, for the due preservation of the privileges of the separate branches of the legislature, that neither should encroach upon the other; or interfere in any matter depending before them, so as to preclude, or even influence, that freedom of debate, or of action, which is essential to a free Council†. And therefore, neither the King, or Lords, or Commons, are to take notice of any Bills, or other matters, depending, or of votes that have been given, or of speeches which have been made, by the

\* The grounds, upon which this resolution was moved and supported, were, that a rumour had prevailed, that his Majesty's name had been used to influence certain Peers to vote against a Bill then depending in the House of Lords, “ for establishing certain regulations for the better management of the territories, revenues, and commerce of this kingdom, in the East Indies.”

† On Friday, the last day of the Parliament held in the 9th year of Henry IV. 1407, some disputes having arisen between the Lords and Commons, touching the grant of a subsidy—it was resolved, “ That in all Parliaments, in the absence of the King, it should be lawful, as well to the Lords by themselves, as to the Commons by them-

selves, to debate of all matters touching the realm, and of the remedies, and *not to disclose the same to the King*, before a determination thereof made, and that by the mouth of the Speaker.—The which order was made, for that part of the aforesaid displeasure arose by the means, that, in the question of the subsidy, the Lords made the King sundry times privy thereto, and brought answer therein from the King; upon which the Commons answered, that the same was against their liberties.” Cotton's Abridgement, p. 465.—See the record at length in Rot. Parl. Vol. III. p. 611.—See also in the 3d volume of this work, under the Observations to the title “ *Supply, Lords interfere.*”



Members of either of the other branches of the legislature, until the same have been communicated to them in the usual and parliamentary manner. When, on the 12th of March, 1575, the Lords desire to know the reasons which moved the Commons to deal so hardly with the Lord Stourton's Bill, for restitution in blood, which had been signed by the Queen, and passed by their Lordships; this message was not well liked of, but thought "perilous, and prejudicial to the liberties of the House:" And resolved, "That no such reason shall be rendered."—So on the 28th of April, 1640, "for avoiding of all misunderstandings between their Lordships and the Commons, for time to come, the Commons desire their Lordships hereafter to take no notice of any thing which shall be debated by the Commons, 'until they shall themselves declare the same to their Lordships;' which the Commons shall always observe towards the proceedings of their Lordships; conceiving the contrary not to stand with the privileges of either House."

There are, however, in the proceedings of Parliament, exceptions to this rule, necessarily arising out of their own forms and orders. In cases where the King is interested, as a party in any Bill depending before the House of Commons, either as Patron of a living, Lord of the manor or soil, or in any other manner; here, as it is the duty of his servants to acquaint him with the purport of such Bills, and to take care that his property or interest may be secured, or that he may have an adequate compensation for them, it is usual for the Chancellor of the Exchequer, or the Chancellor of the duchy of Lancaster, to acquaint the House, either on presenting the petition, or in the course of the Bill, "that his Majesty 'having been informed of the purport of the said Bill,' gives his consent, as far as his Majesty's interest is concerned, that the House may do therein as they shall think fit." And this

this is no breach of the privilege of Parliament, as it is a proceeding founded on the fundamental rules of natural justice.—The purport of some Bills, must necessarily be communicated to the King, even before they are presented; as Bills for the reversal of attainders or outlawries\*, and for restitution in blood; or  
Bills

\* The Bill to reverse the attainder of Lord Russell came to the House of Lords in paper, with the King's name in the margin, and recommending the Bill.—It was received by the Commons without any recommendation, passed through that House, and had the Royal assent, as a private Bill; and the same proceeding was had in the case of the reversal of Algernon Sydney's attainder.—But in the Bill for restoring Basil Hamilton in blood, the Bill had the King's sign manual at the top of the ingrossment, and was presented so ingrossed, and signed by the King, to the Lords.—But this was, as the Clerk of the House of Lords told me, a mistake.—See the 22d of May, 1733, Commons Journals. Mr. O.

In the margin of Lord Russell's Bill was written "WILLIAM R. I do allow of the bringing in of this Bill." It was presented on the 7th of March, 1688.

In the Bill from the Lords, to restore the Duke of Buccleugh to the Earldom of Doncaster, the ingrossment was not signed by the King; but the paper Bill presented to the Lords was signed; and there was a message from the King, of recommendation of the Bill to the Commons, on the 16th of March, 1742, which message I advised. Mr. O.—See in the Lords Journal, the entries on the 20th and 24th of February, and the 2d of March, 1664, relating to Sir Charles Stanley's Bill.—See also in the Journals of the 6th and 7th of May, 1702, a very curious entry upon this subject;

where the Lords resolve, "That this House will, in no future times, ever receive any Bill for reversing outlawries, or restitution in blood, that shall not first be signed by her Majesty, or her successor, Kings or Queens of this realm; and sent by her or them to this House, first to be considered here."

This arose from two Bills of this nature having had their commencement in the House of Commons, "contrary, as is said in the Lords Journal, to the usage of Parliament, and her Majesty's prerogative Royal."—See the resolutions of the House of Lords of the 22d and 23d of May, 1606, and King James I.'s admonition to the House of Commons upon this subject, which is entered in the Lord's Journals, on the 27th of May, 1606.—There is a report made upon this subject, from a Committee appointed by the Lords to search precedents of Bills for reversing judgments, which have begun in the House of Commons, on the 21st of February, 1695.

On the 29th of December, 1666, a Bill for restoring Francis Scawen in blood, is presented to the Lords, recommended by the King.

On the 19th of February, 1707, a Bill is brought from the Commons to the Lords, "for reversing the attainder of Sir Henry Bond," and the Lords are acquainted, "That her Majesty had given her consent to this Bill." They however order this Bill to lie on the table. And on the 25th

of

Bills \* for granting honours or precedence.—There is another case, where, by the standing orders of the House of Commons, it is necessary that the King should be acquainted with the nature of the petition or proceeding, even before it is proposed to the House; and that is, on applications for public money. By the order of the 11th of December, 1706, which is declared to be a standing order

of February, the Earl of Sunderland, by her Majesty's command, brings in a Bill to this purport, "which Bill was signed by her Majesty." It passed the Lords, and was afterwards agreed to by the Commons.—See the instances of Lord Staney's Bill in the Lords Journal of the 10th of February, 1708; and of a Bill for reversing the outlawry of Eleanor Bagot, on the 7th of March, 1708.

\* See in the Lords Journals, 14th of December, 1706, the preliminary address to the Queen (being the fountain of honour) for her allowance to bring in a Bill for settling and continuing his titles and honours to the Duke of Marlborough and his posterity.—On the 22d of December, 1711, the Lords give leave to bring in a Bill, for declaring and settling the precedence of the House of Hanover;—but on the 17th of January, before any Bill is presented, the Lord Treasurer acquaints the House, "That it is her Majesty's pleasure and desire, that the precedence of the Princess Sophia and her family should be settled." And then he presents the Bill for that purpose. See the proceeding on the "Bill for settling the precedence of the Marquis of Lindsey, Great Chamberlain of England, when created a Duke," in the Lords Journal, 23d of June, 1715.—On the 21st of April, 1716, upon an application to the House of Lords from Lord Digby, for a "Bill to debar his eldest son from succeeding to his

"honours;" the Lord President signified his Majesty's consent, "That the House might determine therein, as shall be thought just." So upon the 2d of March, 1718, the House of Lords having resolved to take into consideration the present state of the Peerage of Great Britain, the King sends a message by Earl Stanhope, "That, having been informed that the House of Peers have this subject under their consideration, he is willing that his prerogative stand not in the way of so great and necessary a work." This communication was necessary to entitle the House of Lords to proceed upon such a subject; in which, as in Bills for reversing attainders, and for restitution in blood, the King, as the fountain of honour, is materially interested; and his consent ought to be signified, before any proceeding is begun.—As long ago, as in the year 1539, when Cromwell was made the King's Vicegerent in matters spiritual, and it was necessary to settle the rank of this officer, it appears from the Lords Journal, of the 5th of May, in that year, that the Lord Chancellor presented a Bill concerning the assigning the places of that and several other great officers of the kingdom, "quam quidem billam affirmabat Regiam Majestatem jussisse fieri."—In a Bill which passed in 1663, intituled "An Act for settling the lands of the Earl of Kent, and the Lord Lucas, on the marriage of the said Earl with the daughter of the said Lord

order on the 11th of June, 1713, it is resolved \*, " That this  
" House will receive no petition for any sum of money, relating to  
" public service, but what is recommended from the Crown."  
As soon therefore as any petition of this nature is offered to the  
House, and before it can be received, it is necessary that the Chan-  
cellor of the Exchequer, or some other Member, authorized by the  
King, should acquaint the House, " that his Majesty, ' having been  
" informed of the contents ' of the said petition, recommends the  
" same to the consideration of the House."

And the House, having conducted their proceedings rather  
according to the spirit of this order, than the words, have required

" Lord Lucas," there is a clause, (which, as no particular mention of it appears in the Lords Journal, was probably inserted, whilst the Bill was before the Committee) that has no reference to the title of the Bill; and, though it relates to honours and dignities, does not appear to have had the consent of the Crown, till the Bill was offered for the Royal assent.—The clause recites, " That  
" Charles II. having by letters patent creat-  
" ed the Countess of Kent, Baroness Lucas,  
" to her and her heirs male, and for want of  
" such issue, to the heirs of her body; and  
" if at any time after her death, and default  
" of issue male, there shall be more persons  
" than one coheirs, that then the said honour  
" shall not be in suspense, or extinguished,  
" but shall go to such of the coheirs, as by  
" course of descent would be entitled to  
" other entire inheritances, as offices of ho-  
" nour or public trust;" the clause proceeds to enact, " That the said declarative clause  
" in the said letters patent, shall be and is  
" hereby ratified and confirmed; and that  
" the said barony, honour, and title shall

" from time to time, &c. &c." repeating the words of the letters patent.—As this limitation of the Barony of Lucas is so uncommon, I believe indeed the only one of its kind, and as the Act of Parliament by which the letters patent were ratified and confirmed, is a private Act, and not printed, I have inserted in the Appendix to this volume, N<sup>o</sup> 8, the clause at length.

\* It has been very properly observed, that this order is founded on the principles of the constitution.—For, though it is the sole right of the House of Commons to *grant* the public money, it seems to be only for those services pointed out by the Crown; and, upon this ground, the Committee of Supply arises *only* out of the King's speech; and if that Committee is closed, it must be in consequence of a speech or message from the King, that it can again be instituted.

For the manner of opening the Committee of Supply, after it has been closed, See the 16th of June, 1721, and also the 18th of April, 1748.

the King's recommendation, not only in petitions from private persons, but in other cases of application for public money, not coming from the Crown \*: As, on the estimate for paying and cloathing the Militia; on augmenting the salaries of the Judges; the purchasing Sir William Hamilton's collection of antiquities; and in many other instances.

\* See further upon this subject in the next volume, under title, *Supply*.

## K I N G.

VII. *Sends Messages relating to Members, and other Matters.*

1. **O**N the 9th of December, 1661, the King sends word by the Speaker, that he had restrained Mr. Lovelace for a duel; the House thank him for his attention to their privileges, and send for their Member by the Serjeant.

2. On the 13th of June, 1663, the King sends a message \*, that he had received information, that Sir Richard Temple had made a particular offer to him of his services in Parliament; the House thank the King, and order an enquiry into this very extraordinary affair.—See the further proceedings on the 16th, 20th, 26th, and 27th of June and 1st of July †.

3. On the 19th of December, 1678, message from the King that he had given orders for seizing Mr. Montagu's papers.—See the proceedings upon this message on this day, and the 20th.

4. On the 18th of January, 1705, Mr. Secretary Harley acquaints the House, that in enquiring after the authors of a libel,

\* The King's message is, " That a message was delivered to his Majesty, by a person of quality, from Sir Richard Temple to the effect following—viz. That Sir Richard Temple was sorry his Majesty was offended with him, that he could not go along with them that had undertaken his business in the House of Commons: But, if his Majesty would take his advice,

" and entrust him and his friends, he would undertake his business should be effected, and revenue settled better than he could desire; if the Courtiers did not hinder it."

† On the 1st of July, the Earl of Bristol, who was the person of quality that gave the information, is, at his own desire, admitted into the House, and heard.

there had appeared the names of some Members of the House ; of which her Majesty's tenderness for any thing which hath the appearance of the privileges of the House, had inclined her to command him to acquaint the House, before she directed any further proceedings in the said examination.

5. On the 3d of January, 1710, Mr. Chancellor of the Exchequer informs the House, that he is commanded to acquaint them, that in an examination, at the Treasury, into the abuses in the victualling, the name of a Member had appeared.—The House ordered the examinations to be laid before them.—See the 5th and 9th of January, and 15th of February, when Mr. Ridge, the Member alluded to, was expelled.

6. On the 21st of September, 1715, Mr. Secretary Stanhope acquaints the House, that he was commanded by the King to inform the House, that his Majesty, having just cause to suspect Sir William Wyndham, and several other Members, of supporting an intended invasion, hath given orders for apprehending them ; and that his Majesty desires the consent of the House for committing and detaining them. So on the 21st of November, 1715, with respect to Sir Warwick Bampfylde, Sir William Carew, and Sir John Bland ; and on the 13th of March, 1722, with respect to Dr. Friend ; and on the 28th of February, 1743, on apprehending Lord Barrymore ; and on the 10th of December, 1745, and 5th of August, 1746, on apprehending Archibald Stuart and Sir John Douglas \*.

\* In all these instances, except that of Lord Barrymore, the communication made to the House of Commons, was in pursuance of an Act passed for suspending the Habeas Corpus Act. The cases of Lord Barrymore, and afterwards of Lord George Gordon, were at

a time when no such suspension subsisted ; and in these, therefore, the message from the King, and the address of the House of Commons in answer to it, vary from those in the cases of Sir W. Wyndham and Dr. Friend.

7. On the 3d of December, 1756, Admiral Boscawen acquaints the House, that the King, and Board of Admiralty, having been dissatisfied with Admiral Byng's conduct, he is in custody, in order to be tried by a Court Martial; and that, as he is a Member, the Board of Admiralty think it a respect due to the House, to inform them of this commitment, and of the reasons thereof.—See a similar proceeding in the case of Admiral Knowles, on the 12th of December, 1749; and of Admiral Keppel, on the 14th of January, 1779.

8. On the 17th of February, 1757, Mr. Hunter, from the Admiralty, acquainted the House, that Admiral Byng having been sentenced, and his Majesty having signified his pleasure that the sentence should be carried into execution, a warrant had been signed to put him to death.

9. On the 6th of December, 1757, Lord Barrington informs the House, that he was commanded by the King to acquaint the House; that Sir John Mordaunt had been put under arrest, for disobedience of orders.—So on the 28th of February, 1760, in the case of Lord George Sackville; and of Lieutenant Colonel Dodd, on the 20th of April, 1762\*.

10. On the 19th of June, 1780, Lord North informed the House, that he was commanded by the King to acquaint the House, that his Majesty had caused Lord George Gordon, a Member of this House, to be apprehended and committed for high treason. The House return an address of thanks to his Majesty, for his communicating to them the reason of this commitment.

\* Mr. Dodd was Lieutenant Colonel of a regiment of Militia, then called out into service.



11. On the 13th of June, 1783, General Conway informed the House, that he was commanded by the King to acquaint the House, that the Honourable Major Henry Fitz-Roy Stanhope, a Member of this House, was put under arrest, to be tried by a Court Martial; for which communication, the House return an address of thanks.

## O B S E R V A T I O N S.

.. We may collect from these instances, that, whenever the King, or any of his Ministers, or persons employed by him, find it necessary, for the public service, to put a Member of the House of Commons under arrest; or that, in any public enquiry, matter comes out, which may lead to affect the person of a Member; or, as in the case of Mr. Montagu, to seize his papers; it has been the uniform practice, immediately to acquaint the House of Commons, that they may know the reasons for such a proceeding, and take such steps as they think proper.—As there is no privilege, of which the House of Commons have always been, and indeed ought to be, more jealous, than the security of the persons of the Members, that they shall be under no undue restraint from being able to attend their duty in Parliament, it is highly expedient, that, whenever the public necessity appears to the ministers of the Crown to justify any breach of this privilege, they should, as soon as possible, acquaint the House with the steps they have taken, and the grounds and reasons which induced them to it. And this information is, as we have seen, by a ‘verbal’ message, delivered by the Secretary of State, the Chancellor of the Exchequer, the Secretary at War,

War, or one of the Commissioners of the Admiralty, according to the department in which the proceeding arises.

But, when the object of a message from the King is, not merely to inform the House of Commons of this event, but to desire any proceeding on their part (as for an augmentation of the army or navy, a supply of credit, the payment of the debts of the civil list, &c. &c.) here it is usual to send a 'written' message, signed by the King, with his own hand; and in this case, the person, who is entrusted with the message, informs the House, from the Bar, that he has a message from his Majesty, signed by himself\*; he brings it up, and delivers it to the Speaker; and, as soon as the Speaker has read the signature, the House have always paid that respect to the King's message, as to be uncovered while it is reading; as in the instances of the 24th of May, 1737, and 3d of May, 1739; 1st of April, 1742; 17th of March, 1748; et passim. —And it appears from the printed debates of the House of Commons, in 1620-1, on the 19th of March, in the 1st volume, p. 141, that that House of Commons carried their respect still further, and "that all the while the Attorney General, who was

\* A message from the King, signed by himself, is always read the *first time* by the Speaker, and the Members of the House are uncovered.—If it is read again, it is by the Clerk, and the Members have their hats on. In a Committee, the Chairman reads it the *first time*, and the Members sit covered. Mr. O.—The rule laid down in this note by Mr. Onslow, (though as may be seen from Grey's Debates, Vol. VI. p. 79. this was the ancient practice,) is not agreeable to the forms used by Mr. Onslow himself, and those which have been since observed.—The message, when it is taken into consideration, is again read by the Speaker, and not by the Clerk; and it is not then usual for the Members to be

uncovered.—See the 28th and 29th of March, 1734; and the 5th and 6th of May, 1790. The instances of the 21st of January, 1765, and the 14th of March, 1774, were by mistake.

On the 16th of November, 1722, on reading the report of the conference with the Lords, in which was a message from the King to the Lords, under his Majesty's sign manual, the Speaker and the House, whilst the message was reading, sat uncovered.—But *Hanmer* said, that the House ought not to have been uncovered, unless the message had been sent *immediately* to the House by the King. Mr. O.—In which remark Mr. Onslow concurs.

" the messenger, was in the House, being come from his Majesty,  
 " it was thought fit, and so observed, that every one ' should stand  
 " up ' and be uncovered."

Where the subject \* of the message is ' of a nature ' that it can properly be communicated to both Houses of Parliament, it is expected that this communication should be made to both Houses on the same day †. And when, on the 24th of March, 1725, the King.

\* There is a very extraordinary proceeding in the House of Lords, on the 13th of May, 1678, where the King, seated on the Throne, before he sends for the House of Commons, makes a speech to the Lords, and tells them why he is come there, and for what purpose he sends for the Commons, viz. " to prorogue them, in hopes they will " return in better temper."

† On the 2d of January, 1711, the Queen sends a message to the Lords to adjourn to the 14th.—It appears from Bishop Burnet, Vol. II. p. 589, that exception was taken to this message, as coming to one House only—and that the adjournment, in compliance with the message, was carried by the vote of the twelve new-created Peers, who had taken their seats only on that morning.—The House of Commons had adjourned from the 22d of December, to the 14th of January, and therefore this message could not be communicated to them..

On the 25th of June, 1713, the Queen sends a message to the House of Commons only, respecting the payment of the debts of the civil list.—The Lords (sensible, as Bishop Burnet says, Vol. II. p. 628, " that " this method of procuring this supply was " contrary to their privileges, since all pub-

lic supplies were either asked from the " throne, or by a message sent to both " Houses at the same time") appointed a Committee (on the 30th of June, who reported on the 13th of July) to consider of the method and manner of demanding supplies by the Crown.—Bishop Burnet says, " That they found on this enquiry, no precedents which came up to this practice ; " but some came so near it, that nothing " could be made of the objection." Upon which passage, Mr. Onslow very properly observes.—That the precedents are many, and particularly in King Charles the Second's time ; but (he adds) the practice has been disused of late years, occasioned by a violent speech made by Lechmere \*, then a Peer, in the late reign (in 1725) and which had so much effect on the House of Lords, that Ministers have almost ever since that time sent these messages to both Houses ; but with a distinction in the wording of them, so as to make *the grant* of the money to be only in the Commons, as is done in speeches from the throne ; and thus qualified, says Mr. Onslow, the Commons have made no objection to it.—But see another instance, in 1739 ; where the King sending a message, for a further supply, to the House of Com-

\* See the substance of the speech of Lord Lechmere, in Lords Debates, Vol. III. p. 450.—See also the protest and motion for an address, in the Lords Journals of the 20th of April, and 18th of May, 1726.

King sent a message, for an increase of seamen, to the House of Commons only, and this appeared in the Votes \*, the Lords, on the 30th of March, took notice of this irregularity; and, as appears from the printed Debates, and from the protests of some of the Lords which are entered in their Journals, of the 20th of April, 1726, it was thought by many an unparliamentary mode of proceeding †.—I said, it must be of a nature which ‘can’ be communicated to both Houses at the same time; for when it appeared to the House of Commons, at a conference, on the 16th of November, 1722, that the King had sent a message, under his sign manual, to the Lords, which he had not sent to the House of Commons, no notice was taken of this, nor any objection made, because the message was accompanied with ‘an original declaration,’ signed by the Pretender, and to which the message referred; which declaration, ‘being original,’ could not possibly be sent to both Houses ‘at the same time †.’

mons only, this was taken notice of in the House of Lords, on the 28th of February, and a question was moved, “That it is contrary to the usage of Parliament, and derogatory to the privileges of this House, that a message, signed by his Majesty, asking a farther supply for the carrying on a war, should be sent to the House of Commons singly, without taking any notice of this House.” But the previous question was put upon this question. See, in the 6th volume of Lords Debates, p. 338, a very long and curious debate upon this question.—On the 18th of November, 1760, when the King applies, in a speech from the throne, for provision to be made for the expences of his civil list, he addresses himself only to the House of Commons.

\* See the Lords Journals, 31st of December, 1691, where they resolve, “That the printed Votes of the Commons is sufficient ground for the Lords to take notice of any Resolution of the House of Commons.”

† See the motion for an address upon this subject, in the House of Lords, on the 18th of May, 1726, which passed in the negative.

‡ So on the 12th of May, 1794, when the King sent a message to the Commons, informing them, that he had directed certain books and papers to be laid before them, which had been seized by his Majesty’s orders, no message was sent, at the same time, to the Lords, as the “original” papers could not be communicated to their Lordships.

## K I N G.

VIII. *Sends Black Rod for the House to attend Him.*

1. **O**N the 23d of April, 1666, a motion being made, and the question being put, and votes given in the affirmative, and Mr. Speaker being just putting the question in the negative, the Usher of the Black Rod knocking at the House door, no further proceeding could be had \*.

2. On the 9th of May, 1679, a Committee is appointed to search for precedents; among other things, "Whether the House may debate after the message delivered by the Black Rod for the House to attend upon his Majesty †."

3. On the 25th of June, 1714, whilst the House was in a Committee of the whole House, a message comes by the Black Rod from the Lords, authorised by the Queen's commission to pass Bills; the Committee breaks up, and after the Speaker has re-

\* This was a message from the Lords, authorised by his Majesty's commission to prorogue the Parliament.—See an instance in the Lords Journal, 24th of June, 1701, where the Lords were dividing, when the King came in—and the Journal says, "No resolution was given, by reason of his Majesty's coming into the House, before the votes were reported."

† On the 19th of March, 1627, the Commons were sent for to attend the King in the House of Lords, by a Mr. Crane.—"It was very ill taken, that Mr. Maxwell, Knight

of the Black Rod, had not come himself to bring the message, as had formerly been used; inasmuch, that sundry Members of the House advised, that Mr. Speaker elect should not stir, till they had received the message by Mr. Maxwell himself; but others (howsoever they acknowledged this to have been a great neglect in Mr. Maxwell, and wrong to the House) advised, because his Majesty staid for them, that they should not now further insist upon it, but go up.—And so they did."

ported what passed in the House of Lords, the Chairman of the Committee reports, " That the Committee had made a progress, " but that they arose by reason of the coming of the Black Rod \*." And then moves to sit again.

4. On the 24th of June, 1721, the House were hearing an election at the Bar, and being informed, that the Black Rod was at the door, the counsel were directed to withdraw.

3. On the 9th of April, 1731, the House being in a Committee, the Speaker resumes the Chair, and the Chairman reports, " That the Committee being informed that the Black Rod ' was at ' hand,' had directed him to report a progress, and ask leave to " sit again."

6. On the 16th of March, 1741, the Black Rod comes, after a motion made, and question proposed, " That a Bill do pass." On return from the King, the Speaker reports what passed in the House of Peers, and then the question is put.—See the 22d of March, 1743; and the 20th of February, 1794.

7. On the 15th of April, 1742, the Black Rod interrupts the proceeding on a Bill.—See the 2d of March, 1743; the 17th of April, 1753; the 23d of March, the 5th of April, and the 13th of December, 1759, et passim.

\* It appears from this, that the Committee had broke up, without having time to give their Chairman directions to move the House for leave to sit again.

## O B S E R V A T I O N S.

It appears from the 7th vol. of Grey's Debates, p. 216, that the reason for appointing the Committee, on the 9th of May, 1679, was, that, on the House receiving the King's message, the Speaker had taken up with him a Money Bill, which had passed both Houses, in order to offer it for the Royal assent; and that he had done this without any direction from the House, or intimation given, that the purpose for which the King had sent for the House of Commons was, to give the Royal assent to Bills; both which circumstances, as was then asserted by some very experienced Members, were necessary to authorise the Speaker to carry up the Bill; and therefore they rose to oppose his doing it, even after the message delivered by the Black Rod, to command the 'immediate' attendance of the House in the House of Peers.

Whatever might be the custom at that time, of giving intimation to the House 'for what purpose' the King came to the House of Lords (and perhaps such notice might be then necessary, as Charles II. and James II. \* ~~often came~~ and passed part of the morning

\* On the 21st of March, 1669, Charles II. coming in unexpectedly, in the midst of a debate in a Committee of the whole House, the House was resumed, then his Majesty said to the Lords, "That he is come to renew a custom of his predecessors, long discontinued, to be present at debates, but not to interrupt the freedom thereof: and therefore desired the Lords to sit down and *put on their hats*, and proceed in their business," which they accordingly did.—On the 24th of March, the Lords present an address of thanks to his Majesty for renewing a custom, so long discontinued.—See the en-

tries in the Lords Journal of the 30th and 31st of March, 1670—and particularly of the 26th of January, 1670, where the King reprimands the Lords, for their disorder, in hearing of causes, and in debates; and desires they would keep their places, and proceed in business according to what the orders of the House prescribe.—King William continued this practice of attending the House of Lords, as appears from several entries in the Lords Journals, particularly on the 28th of June, 1689, and the 2d of May, 1690, where it is said, "His Majesty came in, and sat in his chair, and was present at the debates

ing there) nothing of that sort is done at present; whenever the King

" debates in the House." See also the 12th of May, 1690, and the 26th and 28th of January, 1691.—Queen Anne also frequently came and sat in the House of Lords during their debates; particularly in December, 1704; and for several successive days, from the 15th to the 27th of November, 1705. Bishop Burnet's History, Vol. II. p. 405.—This custom was disused in the reigns of George I. and George II. probably from those Princes not perfectly understanding the English language.—His present Majesty, George III, through the course of his very long reign, has never attended the House of Lords, but in his public character, as King, to pass Bills, or to speak from the Throne to both Houses of Parliament.—Sir Francis Winington, in a debate on the 7th of January, 1680, very properly observes, " When the King comes into the Lords House, it takes away the solemnity and freedom of debate.—I have heard a Lord say, That when they were first about settling arbitrary power, Lord Danby first solicited the Lords, and then the King; and the King has taken notice of Lords, that have voted."—See Grey's Debates, Vol. VIII. p. 271.—The truth and propriety of Sir Francis Winington's observation, is fully illustrated by the following extract from Bishop Burnet's History, Vol. I. p. 271. In his account of the transactions of the year 1669, he says " To prevent all trouble from the Lords, the King was advised to go, and be present at all their debates.—Lord Lauderdale valued himself to me on this advice, which, he said, he gave. At first, the King sat decently on the throne; though even that was a great restraint on the freedom of debate; which had some effect for a while: Though afterwards many of the Lords seemed to speak with the more boldness, because they said, one heard it to whom they had no other access, but in that place; and they took the more liberty, because what they had said could not be reported wrong.—The King, who was often weary of time, and did not know how to get round the day, liked the going to the House, as a pleasant diversion. And he quickly left the throne, and stood by the fire; which drew a crowd about him, that broke all the decency of that House: for, before that time, every Lord sat regularly in his place: But the King's coming broke the order of their sitting, as became Senators.—The King's going thither had a much worse effect; for he became a common solicitor, not only in public affairs, but even in private matters of justice.—He would, in a very little time, have gone round the House, and spoke to every man, that he thought worth speaking to. And he was apt to do that, upon the solicitation of any of the ladies in favour, or of any that had credit with them."—For these, and many other reasons that might be suggested, it is to be hoped and desired, that the example of his present Majesty may be adopted by his successors, and that this practice may never hereafter be revived.—There is in the Lords Journal of the 24th of February, 1640, a very curious entry, of Charles I. coming unexpectedly to the House, to hear the charge against Lord Strafford, and his answers, " for his own particular information." The Lords sitting silent; Lord Strafford is, " by the King's command," brought to the Bar, and the articles against him are read, one by one, by the Clerk, and the Lord Strafford's answer to each article is read by his Counsel.—As soon as the King,



King comes to the House of Lords†, and sends for the Commons, if there is a Money Bill, which has passed both Houses ‡, and has been returned from the Lords to the Commons,'  
the

King was gone, the Lords commanded the Lord Keeper to *resume* the House.—And when the House was resumed, the Lords, “taking all that was done in the King’s “presence to be no act of the House,” commanded the Lord Strafford to be brought to the Bar, and demanded his answer in writing.—The King’s presence, whether he comes privately, or on any public occasion, is always marked in the Journal, at the head of the list of Peers—R E X.

† When the King comes to the House of Lords, or directs a commission to be made out, for the purpose of giving the Royal assent to Bills, it is the duty of the Clerk of the Crown to signify to his Majesty the purport of all the Bills that have then passed both Houses, and to receive his Majesty’s pleasure, what answer shall be given when they are offered for his Royal assent. A circumstance happened in June, 1779, which made it desirable to pass all the Bills then ready by commission, *except one*, which was a Bill for altering the duty on Houses.—The Corporation of London, or the Livery (I forget which), had come to a resolution to petition the King against this Bill, which petition the King had appointed to receive on Wednesday the 16th of June.—It was intended to have had a commission on the Monday preceding; and it was therefore wished, if it could have been done, to have kept this Bill out of the commission (for it had then passed both Houses of Parliament). But upon great consideration, and looking into precedents, this was found to be irregular; it was thought not adviseable to withhold this Bill, though nothing would have

been intended by such a proceeding, but to give an opportunity for his Majesty to consider of the City’s petition; and therefore the other plan was adopted, of suspending the issuing the commission for passing any Bill until the day after, viz. Thursday the 17th of June.—But see, in the 4th vol. of Rushworth’s Collections, p 306, an instance where, upon the 3d of July, 1641, Charles the First came and gave the Royal assent to the Poll Bill, whilst the Bills for taking away the Court of Star Chamber, and High Commission Court, having passed both Houses, lay upon the table. The House of Commons being dissatisfied with this, were entering upon debate of this proceeding, on Monday the 5th of July; when the King sent for them to the House of Lords, where he gave the Royal assent to those Bills, and gave his reasons, in a speech, why he deferred that measure on the Saturday preceding.—See the Note in this vol. p. 320.

‡ On the 8th of March, 1696, a message is ordered to be sent to the Lords, to put them in mind, that the Bill, intituled, “An Act for encouraging the bringing in “wrought plate to be coined,” does belong to this House to be presented to the Throne; and to desire it may be sent down to this House.—The following memorandums are afterwards entered in the Journal:

“The Bill being brought by the Clerk “of the House of Lords to the Clerk of this “House, *as Bills relating to money usually are*, “the message was not sent.”

“The reason the House insisted to have “the said Bill to be presented by their “Speaker to his Majesty was, for that the  
“same

the Speaker, without any authority from the House, or any intimation given to the House, that the King comes for the purpose of passing Bills, takes it with him, and offers it at the Bar of the House of Lords for the Royal assent.—But I should apprehend that, even at that time, in 1679, (whether the Speaker did right or wrong in taking the Bill with him, or in that instance acted agreeable to or contrary to ancient forms) the moment the House had received the King's commands to attend him 'immediately,' no other matter could be permitted to intervene, nor any objection heard; but that it was the duty of the Speaker, and the House, to go 'directly' to the House of Lords, there to receive the King's commands. And, as it is the established custom, when the Black Rod knocks at the door, that he is immediately let in, without any notice given by the Serjeant to the House, or question put, (which is necessary in messages from the Lords, and in other cases) I apprehend that, as soon as he knocks, all other business, of what kind soever, must immediately cease, the doors should be opened, and, when he has delivered his message, the Speaker and the House ought to go, without debate or delay, to attend the King in the House of Peers \*. Indeed a contrary doctrine might lead into much confusion; for if the King should come, as was not unusual in the reigns of the Stuarts, on a sudden to prorogue or dissolve 'the Parliament,' and if the House of Commons 'alone' could, by their

"same allowed 5 s. 4 d. per ounce to be given for plate to be brought into the mints to be coined; and authorised the Commissioners of the Treasury to take £. 50,000 out of any monies in the Exchequer for the paying for such plate."

\* Where the Black Rod brings a message to the House, from commissioners authorised by the King, in which is contained the subject of the commission which they are desired to attend to hear read, if the Com-

mons see any irregularity in the proceeding, they do not immediately comply, but when the Black Rod is withdrawn, they send a message to the Lords, stating this irregularity, and their reasons for declining to attend—as on the 11th of July, 1625, and on the 12th of July, 1641.—See this last instance at large in the next volume, under title, *Bills of Supply to be presented by the Speaker.*

forms, by refusing to open the door, or, after the message was delivered, by delaying, or debating whether they should pay an immediate obedience to it, decline going to receive the King's commands, they would thereby have it in their power to resist, and render of no effect, those undoubted prerogatives of the Crown; and therefore, in times even of the greatest heat and violence, this proposition has never been maintained: for, as to what passed on the 2d of March, 1628 \*, the disturbance, which then arose in the House of Commons, was from the Speaker's endeavouring to adjourn the House to the 10th of March, under pretence that the King's pleasure for that purpose had been signified to him, and that he should put no question upon it. And the messages which the King sent, were, 'not for the House to attend him,' but relative to this adjournment †.—Lord Clarendon, in his History of the Rebellion, Vol. I. page 6, speaking of the injudiciousness of Charles I. in dissolving his three first Parliaments, says, "I do not know any formed act of either House (for neither the remonstrance, nor the votes of the last day ‡ were such) that was not agreeable to the wisdom and justice of great courts upon those extraordinary occasions."

\* It is said in the 8th volume of the Parliamentary History, page 333, "that the King sent the Usher of the Black Rod 'for the dissolution of the Parliament,' and that he was refused admittance;" but it appears from the Journals of the House of Lords, that the King was not present upon that day; and therefore this, like many other assertions and observations in that compilation, cannot be true.

† It appears from the Journals of the Lords, Vol. IV. p. 42, that the same message for adjournment, was delivered to the

Lords by the Lord Keeper, and complied with by them.—See also the King's own account of this proceeding, in his declaration, published after the dissolution of the Parliament.—Parl. Hist. Vol. VIII. p. 350.

‡ Yet see in a note at the beginning of the next title, "King dissolves the Parliament," what these proceedings were—particularly Mr. Hoiles's reading the protestation, with the doors locked; though the Gentleman Usher of the Black Rod, with a message from the King, (but not from the Throne) was at the door.

There happened within my memory, and since I have been in the service of the House of Commons, a very extraordinary case; which was in the first year of his present Majesty King George the III<sup>d</sup>. (on the 20<sup>th</sup> of January, 1761) where the King was actually on the throne, and the Black Rod was coming with the message for the House of Commons to attend his Majesty; but, there not being forty Members present, Mr. Onslow, then Speaker, declined taking the Chair, and the King was kept waiting a considerable time. The reason of this was, that it was generally known, that the only purpose, for which the King came at that time, was to give the Royal assent to a Money Bill: this Bill had passed the House of Lords, but the House of Commons had received no message from the Lords to inform them that the Lords had agreed to it, and therefore, till this message was received, the Speaker could not take notice of their agreement, or receive or take up the Bill to offer it for the Royal assent. And though the Lords messengers were at the door, the Speaker could not, agreeable to the ancient rule and unbroken practice of the House, take the Chair, for the purpose of admitting the messengers, till there were forty Members present. If the Black Rod, instead of loitering, as he did, in the passages between the Houses, had come forward and knocked at the door, the Speaker, though forty Members were not present (nor even five Members, and this happens frequently) must have 'immediately' taken the Chair, and gone up to the King \*; but, in that case, he would have been justified in declining to take up with him the Money Bill, which was, at that time, the only object of the King's coming to the House of Lords †.—A message from the King to attend him in the House of Peers, or from

\* But see the entry in the Journal of the 19<sup>th</sup> of March, 1627, where, after the message received, the Commons hesitated, Whether they should go? on account of the in-

formality of the person, by whom the message was brought.

† The present Lord Southampton, then Colonel Fitz-Roy, being in attendance upon the

from the Lords authorised by his Majesty's commission, is the only authority which can allow the Speaker to dispense with the rule of the 5th of January, 1640, and can permit his taking the Chair, though forty Members are not present \*.

It has sometimes been made a question what ought to be done if the Black Rod should knock at the door whilst the doors of the House are locked, and the House are employed in appointing a Committee, under the directions of the Act of the 10th of George III. commonly called Mr. Grenville's Bill? Whether the doors of the House should be opened? or, Whether the House are justified, under the positive directions of that Act, to keep them shut, even against the Black Rod, till the Committee is appointed? I say, it has been sometimes made a question; but, I apprehend, without the least foundation. The express words of an Act of Parliament, which the King is, equally with the House of Commons, bound to take notice of, supersede every other authority; and in this case, the King's prerogative, which he holds by the common law of the realm, is cancelled and taken away by the superior effect of the statute; and therefore, if such an event should happen, which is not probable †, I should think the  
House

the King's person, and coming in late to make one of the forty Members, the Speaker reprimanded him, as he came up the House, for not coming earlier: Colonel Fitz-Roy excused himself, by saying, "He was in waiting upon his Majesty." "Sir," said Mr. Onslow, with a loud and commanding voice, "don't tell me of waiting; this is your place to attend in; this is your first duty."—See the same idea expressed in a Protest of the Lords, on the 3d of February, 1721, upon Lord Chancellor Macclesfield's not coming in time to the House, and when

he came, excusing himself, "That he had been summoned to attend his Majesty at St. James's." To which, the Lords say, "That this is an indignity offered to the House, which is undoubtedly the greatest Council in the kingdom; to which all other Councils ought to give way, and not that to any other."

\* See before upon this subject, p. 165.

† It has been said however, on the other hand, by persons whose opinions on Parliamentary subjects ought to have great weight, that the King's power of sending for the  
House

House would be justified 'by law', in this instance, and in 'this instance only,' to refuse admittance to the Black Rod, till they are authorised, by the Act of Parliament, to open their doors.

House of Commons *at any time* (a prerogative which he holds by the common law) cannot be taken away or abridged but by the *special* words of an Act of Parliament, and not merely by implication.—Whichever of these opinions is right, I am sure that this question—as well as that mentioned before, of "which is the legal Parliament to meet on the demise of the crown" ought not to be left doubtful, and to be determined at the moment the event shall happen.—Since the former publication of this volume, this subject has been brought into discussion in the House of Commons, in the Committee upon the Bill "for the further regulation of the Trial of Controverted Elections, or Returns of Members to serve in Parliament," on the

26th and 28th of May, 1788, in which Bill there was a Clause, providing, "That the Serjeant at Arms shall open the doors for the purpose of receiving a message from the King, or from the Commissioners authorised by his Majesty, requiring the attendance of the House in the House of Peers."—After much debate, the general sense of the House appearing to be, that the proceedings ought not, after the doors had been locked, to be interrupted on any account whatsoever, this clause was left out of the Bill.—This proceeding is, therefore, to a certain degree, a justification of the opinion, expressed in the text upon this question.

## K I N G.

IX. *Dissolves the Parliament.*

1. **O**N the 22d of December, 1515, the Lord Chancellor, by the King's command, both Houses being present in the House of Lords, dissolves the Parliament \*. So on the 18th of July, 1536; the 24th of July, 1540; the 31st of March, 1553; the 16th of January, 1554; the 9th of December, 1555; the 8th of May, 1559; the 29th of March, 1588; the 10th of April, 1593; the 19th of December, 1601; the 5th of May, 1640 †; and the 28th of March, 1681 ‡.

2. On the 29th of March, 1549, the Parliament is dissolved by commission, which is read to both Houses, present in the House of Lords.—So on the 23d of March, 1587; the 7th of June, 1614; the 12th of August, 1625; and the 15th of June, 1626.

\* See the Lords Journals for the proceedings in all these cases.

† See Lord Clarendon's observations upon this rash measure.—He adds, "The King, when he had better reflected upon what was like to fall out, and was better informed of the temper and duty of the House of Commons, was heartily sorry for what he had done. He consulted the same day, or the next, whether he might, by his proclamation, recal them to meet together again, but found that impossible."—History of the Rebellion, Vol. I. p. 111. Book the 2d.

‡ Bishop Burnet gives the following ac-

count of this dissolution of the Parliament then sitting at Oxford: "By the steps which the Commons had taken, the King saw what might be expected from them; so, very suddenly, and not very decently, he came to the House of Lords, the Crown being carried between his feet, in a sedan: And he put on his robes in haste, without any previous notice, and called up the Commons, and dissolved the Parliament: and went with such haste to Windsor, that it looked as if he was afraid of the crowds that this meeting had brought to Oxford."—History of his Own Times, Vol. I. p. 499.

3. On the 19th of April, 1583, the Parliament is dissolved by commission, on a day to which it had stood prorogued. It does not appear from the entries, that the Commons were present.—So on the 14th of September, 1586; and the 9th of February, 1610.

4. On the 10th of March, 1628, the Parliament is dissolved by the Lord Keeper, by the King's command, the Lords present in their robes, and divers of the Commons below the bar, but not the Speaker; neither were they called\*.

5. On

\* This uncommon proceeding arose from what had passed in the House of Commons, on Monday, the 2d of March, when Sir John Finch, the Speaker, delivered a message from the King, commanding him to adjourn the House till Tuesday the 10th of March; several Members objected, "That it was not the Speaker's office to deliver any such command to them; for that the adjournment of the House did properly belong unto themselves." And, Sir John Eliot having offered a remonstrance concerning tonnage and poundage, the Speaker refused to put the question upon it, saying, "He had an express command from the King, as soon as he had delivered his message, to rise;" and thereupon rose and left the chair: but was drawn into it again by Mr. Holles, and other Members; where being pressed by Mr. Holles, Mr. Selden, and some others, to do his duty, but without effect, Mr. Holles read aloud a protestation of the Commons, which, as the separate articles of it were read, was allowed with a loud voice by the House. The House then rose, after having sat two hours; and adjourned till the 10th of March. During this proceeding the King had sent a messenger for the Serjeant with his Mace; but the doors were locked, and the key taken away from

the Serjeant, and given to a Member to keep. The king then sent the Gentleman Usher of the Lords House with a message (but not from the House of Lords); he also was refused admittance. This induced the King, immediately on the same day, the 2d of March, to sign a proclamation (which however was not published till after the 10th of March) declaring his resolution to dissolve the Parliament. And upon the 10th of March, the day to which both Houses were adjourned, the King came to the House of Lords, and without sending for the Commons spake as followeth:

"My Lords,

"I never came here upon so unpleasant an occasion, it being the dissolution of a Parliament: therefore men may have some cause to wonder, why I should rather not choose to do this by commission; it being rather a general maxim of Kings, to leave harsh commands to their Ministers, themselves only executing pleasing things."—And then, after some further words, directed the Lord Keeper to dissolve the Parliament.—The entry in the Lords Journal is, Ipse DOMINUS REX hoc præfens Parliamentum dissolvit.

The compilers of the Parliamentary History are, as was observed before, mistaken, when



5. On the 24th of January, 1678, the Parliament is dissolved by Proclamation, after having been first prorogued. So on the 12th of July, 1679; 18th of January, 1680; 2d of July, 1687; and in all the subsequent instances of dissolution.

## OBSERVATIONS.

We see, from the foregoing instances, that the more antient form of dissolving Parliament was by the King's command, signified to both Houses in the presence of the Sovereign, in the House of Lords, by the Lord Chancellor, or Speaker of that House.

Where from ill health, or any other cause, the King could not be present in person, a Commission was issued under the Great Seal, appointing certain Lords therein named to be Commissioners for the purpose of executing the Royal authority upon this occasion: and this Commission is read to both Houses assembled in the House of Lords.

There are some few instances where (the Parliament not being actually sitting for dispatch of business, but meeting upon a day

when they say, that the second message from the King, by the Gentleman Usher of the Black Rod, was to dissolve the Parliament. It appears from the Lords Journals, that the King was not in the House of Lords upon that day; nor is this so stated in the Information which, upon the 7th of May, was filed by the Attorney General, in the Star

Chamber, against Sir John Eliot, and the other Members.—See further upon this subject, Rushworth's Collections, Vol. I. p. 660. top. 691.—Parliamentary History, Vol. VIII. p. 326.—and Lord Clarendon's observations upon the Proclamation which the King published after the dissolution of this Parliament.—History of the Rebellion, Vol. I. p. 52.

to which they had been prorogued) it does not appear, from the Journals of either House, that the Commons were sent for to be present at the reading of the Commission; though, from the form as well as words of the Commission, in which notice is taken of the Knights, Citizens,\* and Burgesſes, it is moſt probable that theſe Commissions were alſo read in the preſence of both Houſes aſſembled.

The later practice, and that which has been followed without interruption ever ſince the Revolution, has been, that the Parliament is prorogued to a certain day; and then a Proclamation iſſues, diſcharging the Members of both Houſes from their attendance upon that day, and diſſolving the Parliament.

In all the inſtances that have occurred to me, the Parliament was actually ſitting, or was ſeparated by prorogation: I do not find one of a diſſolution of Parliament taking place, whiſt both Houſes, or either of them, were under an adjournment\*. The caſe of the Proclamation which was dated upon the 2d of March, 1628, in which the King declares it to be “his full and abſolute reſolution to diſſolve the Parliament, and gives notice to the Members of both Houſes, that they may depart about their needful affairs, without attending any longer here,” comes the

\* When Deſborough and the Council of Officers had with much difficulty prevailed on Richard Cromwell to ſign a commission for diſſolving his Parliament the next morning, the Houſe of Commons having notice, reſolved not to go up. So that, when Fiennes the Keeper of the Great Seal ſent for them to the other Houſe, the Commons ſhut the door of their Houſe, and would not ſuffer the Gentleman Uſher of the Black

Rod to come in; and then adjourned themſelves for three days, imagining that, by that time, they ſhould convert the Protector from deſtroying himſelf. But Richard was ſo haraſſed by the Council of Officers, that he preſently cauſed a Proclamation to be iſſued out, by which he did declare the Parliament to be diſſolved.

*Clarendon's Hiſt. of the Rebel.*

*Vol. III. p. 517.*

nearest to this point. But, besides that that Proclamation, though bearing date upon the 2d of March, was not published till after the 10th, it is clear, from the King's coming to the House of Lords upon the 10th, and, though not sending for the Commons, directing the Lord Keeper then to dissolve the Parliament, that the Proclamation was considered only as a declaration of his intentions, and not as actually carrying those intentions into effect. Although no instance occurs, at least so far as my examinations have gone, of a dissolution of Parliament whilst both or either House were adjourned, no argument can be drawn from thence, that, by such an adjournment, the power of the Crown to dissolve Parliament could be suspended, or in the smallest degree infringed. That would be to enable either House of Parliament to interrupt the exercise of one of the most important prerogatives of the Crown. The King could not, indeed, under these circumstances, compel the attendance of both Houses, in order, by himself or by commission, to prorogue or dissolve them: but, if such a measure should be necessary, and it should be thought expedient to dissolve the Parliament whilst either House was under an adjournment to a future day, there appears no other mode, than to issue a Proclamation for that purpose; which, whether Parliament should be sitting, or be under a prorogation or adjournment, would certainly have the same operation of putting an immediate end to it.

The practice of proroguing Parliament before its dissolution, which has been uniform now for above a century, has probably arisen from those motives, that are suggested by Charles I. in his speech in 1628, "That it should be a general maxim  
 " with Kings, themselves only to execute pleasing things, and  
 " to avoid appearing personally in matters that may seem harsh  
 " and

“ and disagreeable.” For, however proper it may be frequently to appeal to the sense of the nation at large, by the election of a new Parliament; and however flattering this may be to the electors; it happens, from a variety of circumstances, that to the elected, who are, actually in possession of so valuable a privilege as that of giving their voice in the Great Council of the nation, a dissolution of Parliament is always an unwelcome and displeasing measure.

By the Act of the 1st of George I. stat. 2, chap. 38, the Crown is restrained from continuing the existence of a Parliament for a longer term than seven years; for, by that statute, it is enacted, “ That all Parliaments hereafter to be called, assembled, or held, shall and may respectively have continuance, for seven years, and no longer; to be accounted from the day on which, by the writ of summons, such Parliament shall be appointed to meet.” This law, commonly called ‘ The Septennial Act,’ extended the duration of Parliaments to seven years; which, by the Act of the 6th of William and Mary, chap. 2, had been limited to three\*. Before this Act  
of

\* It has been sometimes a subject of discussion, Whether this measure of extending the duration of Parliaments from *three to seven* years, was wise and prudent? And many very weighty arguments have been urged on both sides of this question.—As it may however be a matter of curiosity, to know what was the opinion of a person very well qualified, as well from a sound understanding, as from the course of a long political life, to form a judgment on such subjects, especially as that opinion was not founded on theoretical principles, but drawn from an experience of se-

veral years, I have inserted the following quotation, from Lord Danby’s preface to his Letters, which were published in 1710, sixteen years after the Triennial Act of the 6th of William and Mary had been in force; “ Indeed I have lived to find Kings to be true Prophets, as well as Kings.—For I have seen many villainous designs, acted under the cover of the Popish plot: and I have seen many abuses of the Triennial Act, about which King William was very much displeased with me for concurring in it; and used the very same expression

of William and Mary, which passed in 1694, there was, by law, no limitation of time for the duration of Parliaments; the Crown was at liberty, if it found a Parliament subservient to its views, to extend the existence of that Parliament for any term; and, in fact, the Parliament which was elected in 1661, soon after the Restoration, was not dissolved till January, 1678-9, having continued almost eighteen years.

The Acts passed in the 16th year of Charles I. and 16th of Charles II. \*, which by Lord Clarendon, Burnet, and the other historians of those times, are improperly called “Bills for Triennial Parliaments †,” were not intended to limit the duration, but to secure the meeting and sitting, of Parliaments. And they accordingly provide, “That the sitting and holding of Parliaments shall not be intermitted or discontinued above three years at the most.”

The latter of these statutes, viz, the Act of the 16th of Charles II. is yet in force. So that, with respect to the calling and holding of Parliaments, the prerogative of the Crown, which by the antient laws of this realm was under no particular direction or restraint ‡, is now limited, by the statutes of the 16th of Charles II. and

“which King Charles had done on the other occasion, “That I should live to repent it.” And I am not afraid to acknowledge, that I have repented both, since I have seen such very wrong uses made of them.”

\* See the Statute of 16th Charles I. chap. 1, in Scobell's Collection; and the 16th of Charles II. chap. 1, in the Statutes at Large.

† What is now commonly and more properly called the Triennial Bill, is the Act of the 6th of William and Mary, chap. 2, which limited the duration of Parliaments to three years, and at the same time repeats the provisions in the 16th of Charles II. “That a Parliament shall be holden once in three years at the least.”

‡ See the Note in p. 276 of this volume; from whence it will appear, that, though the Crown

and the 6th of William and Mary, and by the 1st of George I. as by the two former of these laws, it is enacted, that Writts shall issue for the calling of a Parliament within three years after the determination of the former Parliament: and, by the latter, that the Parliament so called shall not have continuance for above seven years. •

Crown was not limited to call a Parliament within any precise or definite time, yet it was always one of the antient rights and liberties of this country, (as the claim is expressed in the Bill of Rights) "That for

" redress of all grievances, and for the  
" amending, strengthening, and preserving  
" of the laws, Parliaments ought to be held  
" frequently."

## K I N G.

X. *How attended with Addreses.*

**I**F it is a joint Address of both Houses; as soon as the Address is agreed to, it is left to the Lords, to know at what time the King will please to be attended with it; and they inform the House of Commons, by message, of the King's answer.—See the 21st of March, 1627; the 27th of March, 1673; the 15th and 17th of March, 1676; the 21st and the 24th of March, 1728; the 18th of March, 1739; the 23d of November, 1739; and the 26th and 27th of April, 1751. The Houses then meet at the place and time appointed by the King, and the Address is read by the Speaker of the House of Lords\*.—There is, on the 14th of May, 1661, a very particular entry in the Journals of the House of Commons of this proceeding.—It has sometimes happened, that, from particular circumstances of the King's health, or other causes, it has been more convenient, instead of the two Houses going up in a body, that the King should be attended by a Committee from each House†, and in this case the Commons appoint double the number of the Lords, as on the 27th of March, 1673, the 15th of March, 1688, and 31st of

\* See the Commons Journal, 16th of February, 1640.

† See on the 31st of March, 1628, where both Houses are to attend the King, in the Banqueting-house, and after an answer sent to the Lords, "That this House will with their Lordships, attend his Majesty at the time and place."—It is afterwards re-

solved, upon question, "Mr. Speaker not to go, it being intended only to be a Committee of both Houses." This is the more extraordinary, as it appears from the Lords Journal of this day, "That the King had appointed to be attended by both Houses."

March, 1756 \* ; or the Address is presented by the Chancellor and Speaker only, as was done on the 23d of December, and 27th of January, 1708, “ in respect of her Majesty’s present circumstances,” on account of the death of Prince George of Denmark.

If it is the Address of the House of Commons alone, this is presented by the whole House, or by such particular Members as are of the Privy Council. There is no precise rule to be drawn, either from the subject-matter of the Address, or from the form in which it is drawn up (whether only as a Resolution, or an Address prepared by a Committee pursuant to a Resolution) in what manner it shall be presented. It has frequently been the practice to present Resolutions for an Address (without drawing them up in form) by the whole House ; as may be seen on the 3d of February, 1707 ; where a motion is made, and question put, “ That a “ Committee be appointed to draw up the said Address,” and it passed in the negative. So on the 17th of December, and 10th of March, 1718 † ; the 29th of March, 1721 ; the 17th of April, 1721 ; the 25th of March, 1726 ; the 7th of May, 1728 ; the 14th of March, 1728 ; the 27th of February, 1729 ; the 29th of March, 1734 ; the 9th and 30th of March, 1738 ; the 23d of March, 1741 ; the 11th of April, 1745 ; the 25th of March, 1755 ; the 3d of March, 1761 ; et passim ‡. And, vice versa, though an Address is drawn up in form, pursuant to a Resolution,

\* It appears from the Lords Journal of the 31st of March, that notice was taken there of his Majesty’s indisposition, and that therefore it might not be convenient for him to be attended by the whole House.

† This of the 10th of March, was a resolution for an Address, in answer to a speech from the Throne.

‡ On the 1st of March, 1782, the Address

respecting the carrying on the war with America was presented to his Majesty in the form of a resolution, by the whole House ; and the Address on the 25th of May, 1792, on his Majesty’s proclamation, was sent, in the form of a Resolution, to the Lords for their concurrence, and was, in that form, presented to the King, by both Houses.



it is not ' therefore ' necessary it should be presented by the whole House, but may, as was done on the 10th of May, 1732, and 24th of November, 1758 ; and the 11th of March, 1789, be presented by Privy Counsellors \*.

\* On the 23d of November, 1708, soon after the death of Prince George of Denmark, when the Address to the Queen had been agreed to, the Members of the Privy Council were directed to know her Majesty's pleasure, when she would be pleased to be attended with the said Address, and " in what manner." On the 24th of Novem-

ber, Mr. Secretary Boyle acquaints the House, " That her Majesty takes very kindly this application of the House to her, and that it is her pleasure, that such Addresses, as the House of Commons desire at this time should be delivered to her Majesty, should be delivered by such Members as are of her Privy Council."

## A P P E N D I X

TO THE

## S E C O N D V O L U M E.

N° 1.—(p. 61.)

**O**N the 20th of May, 1760, Lord Egmont applied to the Speaker, Mr. Onslow, before the House sat, to acquaint him, that 'he intended to move the House for a new writ for the county of Kent, in the room of Mr. Watson, *who was made a Peer*. Mr. Onslow told him, that the form of his motion must be, " in the " room of Lewis Monson Watson, Esquire, now Lord Sondes, " called up to the House of Peers;" and that the House received the Motion upon the authority of the Member who made it. Lord Egmont said, Mr. Watson *had kissed the King's hand*, and he supposed that was sufficient. To which Mr. Onslow replied, that with respect to vacating a seat by the acceptance of an office, under the 6th of Queen Anne, ch. 7, the kissing of hands had been held sufficient; and that the custom had been, and still continued, to move for a new writ upon such kissing of hands. But, though this was the general rule, there had been some instances where it

had been otherwise. *Tom Wyndham*, he said, in his memory, had kissed hands for the office of a Commissioner of the Customs; but when he afterwards found it was to be in Scotland, he refused to accept it; and, though Sir Robert Walpole wanted to get him out of the House of Commons, he kept his seat during the remainder of that Parliament, maintaining, "That his seat was not void, for that he had not accepted of any office." Also in the case of Mr. Pelham, and the other great officers who resigned in Lord Granville's administration; there, though they took their places back again (and Mr. Pelham had actually resigned the Seals of Chancellor of the Exchequer, and left them with the King), the best opinions were, "That this re-acceptance did not create a necessity of a re-election, their offices not being void by resignation only, till they were removed by the appointment of a successor;" for that, in all appointments by patent, there was a clause of removal of the preceding officer: that, however, kissing the King's hand is held to be such an *acceptance of an office* (implying a consent of the King to give, and of the person to accept) as will, for the sake of expedition, justify a Member to make his motion for a warrant for a new writ. But in *the case of a Peerage* it was quite different: The Member, who upon this occasion moves for a new writ, must say, "in the room of A. B. called up to the House of Peers:" for the attendance in both Houses of Parliament is considered as a service, and the two services are incompatible with each other. But this fact is seldom enquired into by the House, but taken upon the authority of the Member who moves it; and Mr. Onslow said, it was therefore Lord Egmont's duty to consider, whether he would take upon himself to inform the House, that Mr. Watson was called up to the House of Peers; and to assist him in that determination, he would acquaint his Lordship with some points to ground his judgment upon:

A person:

A person becomes a Peer, either by descent or by creation. When by the former, the instant the ancestor dies, the heir becomes a Peer, and his seat in the House of Commons is immediately vacant; and there is no necessity to wait for the issuing of the writ to call such heir to the House of Peers; for it is only a writ of summons to attend his service there; and without it, or though he should never take his seat there, he is, to all intents and purposes whatsoever, a Peer of the Realm. And if, in some particular case, or to answer any particular purpose, this writ of summons should be delayed to be issued, the House of Commons would nevertheless consider his seat amongst them as vacated, and would order a new writ.—In the case of the late Lord Carlisle, when, upon the death of his father, a new writ was moved, the Speaker said, he had asked the mover of it, Whether the writ of summons had issued? but that this proceeded merely from curiosity, his seat in the House of Commons being vacant, whether it had issued or not.

When a *person is created a Peer*, there are several steps in the proceeding. First, the King's warrant issues for the making out the Letters Patent, which, when made out, are carried to the Chancellor, to be passed under the Great Seal; but as soon as they are brought to him, he indorses his Recepi upon them; and whenever they are afterwards sealed, the date of passing them under the Great Seal must, by virtue of the 18th of Henry VI. ch. 1, be the same with the date of the Recepi. Now, as to the time when a person commences a Peer by creation, it is clear it cannot be till the patent is brought to the Chancellor, and his Recepi indorsed upon it; which indorsement must be made immediately: and if either the King, or the person to be created, should die before the Recepi is indorsed, though the warrant should have been signed, it

is certain that \* no person could receive any benefit from it. But as soon as the *Recepi* is indorsed, then there is some ground for arguing that the Peerage takes place; because the Chancellor or Keeper of the Great Seal must, by the statute of the 18th of Henry VI. when he fixes the Great Seal to the patent, antedate it to the day of the *Recepi*; and it should therefore seem as if the person was entitled to the effect of that patent from such date. Mr. Onslow said he would not give any express opinion upon this point; but seemed to think that a new writ might properly be moved for, when the patent was in that stage as to have had the *Recepi* indorsed upon it. He said he remembered to have put the question to Lord Hardwicke, "What would be the effect, if the King should die after the indorsement, but before the sealing?" and that Lord Hardwicke was of opinion, "The Chancellor might put the Seal afterwards, and it would operate to the time before." So if the person to be created should die in this interim, Mr. Onslow thought, upon the same reasoning, the Seal might be put to the patent, and the children might reap the benefit of it. He likewise thought, that, if it should be known that the *Recepi* was indorsed, and the Great Seal kept back for any particular purpose, and it should be taken notice of in the House of Commons, that the person named in such patent, continued to sit and vote there as a Member of that House, the House of Commons ought not to suffer this, any more than they would in the case of a person whose father, a Peer, was dead, and who yet declined taking his seat in the House of Lords.—This was the substance of the conversation which passed between Mr. Onslow

\* On the 24th of March, 1756, the King actually signed the warrant, directing Mr. Murray, the Attorney General, to prepare a Bill for the Royal signature, for making out a Patent of Peerage to Sir Dudley

Ryder, then Chief Justice of the King's Bench.—Sir D. Ryder died on the 26th of March, so no further proceeding was had in this business.

and Lord Egmont, when I was present, on the 20th of May, 1760. It being found afterwards, upon enquiry, that Mr. Watson's patent had not reached the stage of having the Recepi indorsed, Lord Egmont declined making his motion that day, and the warrant for the new writ for Kent was not ordered till the 22d of May.

It is, however, often the practice to move for the new writ, upon kissing the King's hand, as well in the case of a Peerage, as of an office.

A P P E N D I X, N<sup>o</sup>. 2. (p. 61.)

**T**HE Lords insist upon their amendment:—First, Because they conceive the said *general* disabling clause ought to be repealed, as inconsistent with the nature and constitution of the *English* government. For to enact, that all persons employed and trusted by the *Crown* shall, for that reason alone, become incapable of being trusted by the *People*, is in effect to declare, that the interests of the *Crown* and of the *People* must be always contrary to each other: which is a notion no good *Englishman* ought to entertain.

Secondly, They think such a clause is manifestly injurious to the people of *England*, who are the proper judges of what persons are fit to represent them in the House of Commons: and therefore a clause, which in so great a measure deprives the electors of their freedom in choosing, seems to be built upon a supposition, that the people are become either so corrupt or so insensible, that they ought no longer to be trusted, in the same manner they have always hitherto been, with the choice of their own Representatives; and may often deprive them of the service and assistance of the most valuable men in the kingdom: for that will always be the case, when the *Crown* makes a right choice, in filling offices with gentlemen of interest, probity, and understanding.—See the 3d and 4th reasons.

Fifthly, The government has subsisted happily for many hundred years, without any disabling clause of this nature: and the Lords have observed, that the clamorous discourses spread about in relation

tion to the great number of officers sitting in Parliament, have been chiefly since the late happy Revolution : and yet, within the compass of that time, more excellent laws have been made, for declaring and securing the rights and liberties of the people, and the freedom of Parliaments, than in the course of some ages before ; which does demonstrate, that there has been hitherto no mischief from persons in office ; and gives the Lords cause to think, that such clamours, though they may have created some prejudice in the minds of well-intentioned persons, yet took their true rise from ill-designing men, who observed with regret the active zeal with which those who were in employments under the Crown supported the present establishment, and pursued the common interest of Prince and People.—Lords Journals, 11th of February, 1705.



## A P P E N D I X, N° 3. (p. 170.)

*A List of the Names of the Persons returned to serve in Parliament in the Year 1656, for the several Counties and Corporations within the Commonwealth of England, Scotland, and Ireland, and the Dominions thereunto belonging.*

*Bedford.*

**W**ILLIAM Butler, Knight  
John Harvey  
Richard Wagstaff  
Samuel Beford  
Richard Edwards.

*Bedford Town.*

Thomas Margets.

*Berks.*

William Trumball  
John Southby  
Edmond Dunche  
John Dunche  
William Hide.

*Abington.*

Thomas Holt.

*Reading.*

Sir John Barkstead  
Daniel Blaggrave.

*Buckingham.*

Lord Whitlock  
Sir Richard Piggot  
Richard Grenville  
Richard Ingoldsby  
Richard Hampden.

*Buckingham Town.*

Francis Ingoldsby.

*Alisbury.*

Thomas Scot.

*Chipping-Wiccomb.*

Maj. Gen. Tobias Bridge.

*Cambridge and Ely.*

Sir Francis Russel, Bart.  
Robert Castle  
Henry Pickering  
Robert West.

*Univerfity.*

Lord Richard Cromwel.

*Cambridge*

*Cambridge Town.*  
Alderman Richard Tymbes.

*Ely.*  
John Thurloe  
William Fisher.

*Chester.*  
Sir George Booth, Bart.  
Thomas Marbury  
Richard Leigh, Peter Brook.

*Chester City.*  
Edward Bradshaw.

*Cornwal.*  
Francis Rous  
John St. Aubin  
Anthony Rous  
Anthony Nichol  
Richard Carter  
Thomas Ceely  
William Braddon  
Walter Moyle.  
*Launceston.* Thomas Gewen.  
*Truro.* Walter Vincent.

*Penryn.* John Fox.  
*Eastlow & Westlow.* John Buller.

*Cumberland.*  
Maj. Gen. Charles Howard  
William Briscoe.

*Carlisle.*  
Scoutmaster Gen. Downing.

*Derby.*  
John Gell  
Sir Samuel Sleight  
Thomas Saunders  
German Pole.  
*Derby Town.* Gervase Bennet.

*Devon.*  
Sir John Northcot, Bart.  
Sir John Yonge  
Robert Rolle  
Arthur Upton  
Thomas Reynel  
William Morrice  
Henry Hatfell \*  
Edmond Fowell

John

\* This gentleman was my great-grandfather; his name occurs frequently in the Journal as a very active Member, in the Parliaments summoned by Cromwell—but never so much to his credit, as on the 6th of October, 1654, when he appears as Chairman of a Committee appointed to consider, “How encouragement may be given for transporting of Corn.”—On the 27th of October, Captain Hatfell reports, from this Committee, “That it shall be lawful for any person, being a native of this commonwealth, to transport Wheat and other grain, when the prices shall not exceed a certain rate: Wheat 36*s.* the quarter, and the rest in proportion, *provided that such Corn and Grain shall be transported in ships*

*“or vessels of this commonwealth.”*—This and the other resolutions were agreed to on the 31st of October, and the Members of the Committee are ordered to prepare a Bill according to these votes.—This principle, of restraining the exportation of Corn to *British ships*, which was first recommended by this Committee, was afterwards adopted in 1689, when the bounty was granted.—Captain Hatfell generally sat in Parliament for the borough of Plympton, which was in the neighbourhood of Saltram, where he resided.—Saltram is since become the property of Mr. Parker, lately created Lord Boringdon.—It appears from the Journal of the 28th of March, 1649, That, at that period, he was prisoner in Jersey to the Royal Party;

John Hales

John Dodderidge

Thomas Saunders.

*Excester.*

Thomas Bampffield

Thomas Westlake.

*Plymouth.* John Maynard

Timothy Allop.

*Dartmouth, Clifton, Hardnes.*

Edward Hopkins

*Totnes.* Christopher Maynard.

*Barnstable.* Sir John Coppleston.

*Tiverton.* Robert Shapcot.

*Honyton.* Samuel Searle.

*Dorset.*

Col. William Sydenham

John Bingham.

Robert Coker

John Fitz-James

James Dewey

John Trenchard.

*Dorchester.*

John Whiteway.

*Weymouth and Melcomb-regis.*

Dennis Bond.

*Lyme-regis.* Edmond Prideaux.

*Poole.* Edward Butler.

*Dirham.*

Thomas Lithame.

James Clavering.

*Dirham City.* Anthony Smith.

*Yorke. East-Riding.*

Sir William Strickland

Hugh Bethel, Junior

Richard Darley

Henry Darley.

*West-Riding.*

Lord Lambert

Francis Thorpe

Henry Tempest

Henry Arthington

Edw. Gyll, John Stanhope.

*North-Riding.*

George Lord Eyre

Col. Robert Lilburn

Luke Robinson

Francis Laffels.

*Yorke City.*

Lord Widdrington

Thomas Dickenson.

*Kingston upon Hull.*

William Lyfter.

*Beverley.* Francis Thoope.

*Scarborough.*

Edward Salmon.

*Richmond.* John Bathurst.

*Leeds.*

Francis Alanfon, Senior

Adam Baynes.

*Hallifax.* Jeremiah Bently.

*Essex.*

Sir Thomas Honywood

Party; and upon the same day, £. 300 is ordered to be provided for him, in consideration of his sufferings, and for the relief of his wife and children.—It is stated in Thurloe's State Papers, Vol. VI. p. 256, That in May, 1657, he, with Major General Kelsey,

were appointed Commissaries of the English forces who were sent by Cromwell, into France, under the command of Sir John Reynolds, to serve with Marshal Turenne, at the siege of Dunkirk.

Dionysius Wakering  
Henry Mildmay  
Carew Mildmay  
Sir Richard Everard, Bart.  
Robert Barrington  
Dudley Templer  
Oliver Raymond  
Edward Turnor  
Sir Thomas Bowes  
Hezek. Hains, John Archer  
Sir Harbottle Grimstone.

*Colchester.*

Henry Laurence, L. Presid.  
John Maidstone.  
*Maldon.* Joachim Matthews.

*Gloucester.*

George Berkley  
John Howe  
John Corfts  
Baynham Throckmorton  
William Neaft.

*Gloucester City.*

General John Disbrow  
Thomas Pury, younger.  
*Tewksbury.* Francis White.  
*Cirencester.* John Stone.

*Hereford.*

Maj. Gen. James Berry  
Edward Harloe  
Bennet Hoskins  
Benjamin Mason.  
*Hereford City.* Worth Rogers.  
*Leomster.* John Birch.

*Hertford.*

William Earl of Salisbury  
Sir Richard Lucy, Bart.  
Sir John Wittronge  
Sir John Gore

Rowland Litton.  
*St. Albans.* Albon Cox.  
*Hertford Borough.*  
Isaac Puller.

*Huntington.*

Gen. Edward Montagu  
Henry Cromwell  
Nicholas Pedley.  
*Huntington Bor.* John Barnard.

*Kent.*

John Dixwel  
William James  
Henry Oxenden  
Sir Thomas Style, Bart.  
John Boys  
Lambert Godfrey  
Richard Beale  
John Seyliard  
Ralph Welden  
Richard Meredith  
Daniel Shatterden.

*Canterbury City.*

Thomas St. Nicholas  
Vincent Denn.  
*Rochester City.* John Parker.  
*Maidstone.* John Banks.  
*Dover.* Maj. Gen. Kelsey.  
*Sandwich.* Mr. Firberne.  
*Quinborough.* Gabriel Livesey.

*Leicester.*

Thomas Beaumont  
Francis Hacker  
William Quarles  
Thomas Pochin.

*Leicester Borough.*

Sir Arthur Haslerig  
William Stanely.

*Lincoln.*

Thomas Hall  
 Thomas Lister  
 Thomas Hatcher  
 Edward Rossitor  
 Charles Hall  
 William Wolley  
 Francis Fiennes  
 William Savile  
 William Welby  
 Charles Hufsey.

*Lincoln City.*

Original Peart  
 Humphrey Walcot.  
*Boston.* Sir Anthony Irby.  
*Grantham.* William Ellis.  
*Stanford.* John Weaver.

*Great Grimsby.*

William Wray.

*Middlesex.*

Sir John Barkstead  
 Sir William Roberts  
 Challenor Chute  
 William Kissen.

*Westminster.*

Col. Edward Grosvenor  
 Edward Cary.

*London.*

Thomas Foot, Alderman  
 Sir Christopher Hack  
 Thomas Adams, Alderman  
 Richard Brown  
 Theophilus Biddolph  
 John Jones.

*Monmouth.*

Maj. Gen. James Berry  
 John Nicholas.

Edward Herbert.

*Norfolk.*

Charles Fleetwood  
 Sir John Hobart, Bart.  
 Sir William Doily  
 Sir Ralph Hare, Bart.  
 Sir Horatio Townshend  
 Philip Woodhouse  
 Robert Wilton  
 Robert Wood  
 John Buxton  
 Thomas Sotherton.

*Lyn-Regis.*

Gen. John Dufbrow  
 Maj. Gen. Skipton  
 Guibon Goddard.

*Norwich City.*

Bernard Church  
 John Hobart.

*Great Yarmouth.*

Charles George Cock  
 William Burton.

*Northampton.*

Sir Gilbert Pickering, Bart.  
 Lord Cleypool  
 Maj. Gen. William Boteler  
 James Langham  
 Thomas Crew  
 Alexander Blake.

*Peterboure.*

Francis-St. John.

*Northampton Town.*

Francis Harvey.

*Nottingham.*

Maj. Gen. Edward Whalley  
 Edward Clud

Edward

Edward Nevil  
Pemton Whalley.

*Nottingham Town.*

Col. James Chadwick  
William Drury, Alderman.

*Northumberland.*

William Fenwick  
Lord Widdrington  
Robert Fenwick.

*Newcastle upon Tyne.*

Walter Strickland.

*Berwick.*

Col. George Fenwick.

*Oxford.*

Charles Fleetwood  
William Lenthall  
Robert Jenkinson  
Miles Fleetwood  
Sir Francis Norris.  
*University.* Nathaniel Fiennes.  
*Oxford City.* Richard Croke.  
*Woodstock.* M. Gen. Wil. Packer.

*Rutland.*

William Shield  
Abel Barker.

*Sallop.*

Thomas Mackworth  
Philip Young, Samuel More  
Andrew Lloyd.

*Shrewsbury.*

Col. Humphrey Mackworth  
Samuel Jones.  
*Bridgenorth.* Edward Waring.  
*Ludlow.* John Aston.

*Stafford.*

Sir Charles Wosley

Thomas Crompton  
Thomas Whitgreave.

*Litchfield.*

Thomas Minors.

*Stafford Town.*

Martin Novel.

*Newcastle on the Lyne.*

John Bowyer.

*Somerſet.*

General Diſbrow  
John Buckland  
Alexander Popham  
Robert Long, John George  
Francis Luttrell, John Aſh  
John Harrington  
Liſlebone Long  
William Wyndham  
Francis Roll.  
*Taunton.* Robert Blake  
Thomas Gorges.  
*Bath.* James Aſh.  
*Wells.* John Jenkyn.  
*Bridgwater.* Gen. Diſbrow.  
*Briſtol.* Robert Aldworth  
John Doddridge.

*Southampton.*

Lord Richard Cromwell  
Maj. Gen. William Goffe  
Robert Wallop  
Richard Norton.  
Thomas Cole  
John Bulkley, Richard Cob  
Edward Hooper, Senior.  
*Wincheſter.* John Hildeſley.

*Southampton Town.*

John Liſle, Lord Com.

*Portſmouth.*

*Portsmouth.* Thomas Smith.  
*Isle of Wight.* William Sydenham  
 Thomas Bowreman.  
*Andover.* Thomas Hussey.

*Suffolk.*

Sir Henry Felton  
 Sir Thomas Bernardiston  
 Henry North  
 Edmond Hervey  
 Edward Wineve  
 John Silkmore  
 William Bloys  
 William Gibbs  
 Robert Brewster  
 Daniel Wall.

*Ipswich.* Nathaniel Bacon  
 Francis Bacon.

*Bury St. Edmonds.* Samuel Moody  
 John Clark.

*Dunwich.* Francis Brewster.

*Sudbury.* John Fothergill.

*Surry.*

Sir Richard Onslow  
 Arthur Onslow  
 Francis Drake  
 Lewis Audley

George Duncomb  
 John Blackwell, Junior.

*Southwark.* Samuel Highland  
 Peter De La Noy.

*Guildford.* Maj. Gen Thomas  
 Kelsey.

*Rigate.* John Goodwin.

*Suffex.*

Herbert Morley  
 Sir John Pelham  
 John Fagg  
 John Stapley

Anthony Shirley  
 George Courthope  
 Sir Thomas Rivers, Bart.  
 Sir Thomas Parker.

*Chichester.* Henry Peckham.

*Lewis.* Anthony Stapely.

*Rye.* Mr. Hayes.

*Arundel.* Sir John Trevor.

*Warwick.*

Richard Lucy  
 Sir Roger Burgoyne  
 Edward Peyto  
 Joseph Hawksworth.  
*Coventry City.* William Purefoy  
 Robert Beake.

*Warwick Borough.*

Clement Throckmorton, Junior.

*Worcester.*

Maj. Gen. James Berry  
 Sir Thomas Rous, Bart.

Edward Pitt

Nicholas Lechmere

John Nanfan.

*Worcester City.* Edmond Giles.  
 William Collins.

*Wilts.*

Sir Anthony Ashley-Cooper  
 Sir Walter St. John, Bart.

Alexander Popham

Thomas Grove

Alexander Thistlewaite

John Bulkley

Richard Grubamhow

William Ludlow

Henry Hungerford

Gabriel Martyr.

*New Sarum.* William Stone  
 James Heely.

*Marleborough.*

*Marleborough.* Cha. Fleetwood,

L. G.

*Devizes.* Edward Scotton.

*Lancashire.*

Sir Richard Hoghton

Col. Standish

Col. Holland.

*Westmoreland.* Christopher Lister

Thomas Burton.

*Wales.*

George Twisleton

Griffith Bedwrda

Col. Philip Jones

Evan Lewis

Col. John Clark

James Philips

Lord Cleypool

Maj. Gen. Rowland Dakins

John Glyn

Robert Williams

Col. John Jones

Col. John Carter

John Trevor

Edmond Thomas

John Price

Hugh Price

Charles Lloyd

John Upton

George Gwyn

Henry William.

*Scotland.*

Col. Mitchel

Col. David Barclay

Col. Winthrope

Sir John Weyms, L. of Boghe

Sir Edward Rhodes

Godfrey Rhodes

Col. Talbot

John Lockhart

Lord Cochran

Mr. Disbrowe

Judge Swyntoun

Mr. Kerr

Judge Advocate Whalley

Judge Smith

Col. Salmon

Sir James Mac-dowel

The Earl of Tweeddale

Robert Woosley

Sir Alexander Wedderburn

Col. Henry Markham

Col. Whetham

Lord President Broghill

Lord Provost Ramsey

Commiffary Lockhart

Scoutmaster Gen. Downing

Alexander Douglas.

*Ireland.*

Lord Broghill

Maj. Gen. Jephson

Vincent Gookin

Sir John Reynolds

Col. Abbot

Mr. Halfey

Col. Sadler

Maj. Redman

Maj. Owen

Sir Theophilus Jones

Sir Hardrefs Waller

Maj. Morgan

Mr. Biffe

Mr. Tigh

Col. Fowke.

Maj. Aston

Mr. Blagny

Lieut.



Lieut. Col. Newborough  
 Lieut. Col. Beresford  
 Ralph King  
 Col. Cooper  
 Lieut. Col. Tragle  
 Col. Ingoldsby  
 Walter Waller

Sir Robert King  
 Col. Bridges  
 John Davis  
 Maj. Potter  
 Maj. Ratcliffe  
 Col. Suttleworth.

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*A LIST of Counties and Boroughs which returned Members to  
 Parliament at the Time of the Accession of King Henry the Eighth  
 to the Crown.*

*Bedfordshire*

Bedford

*Berkshire*

New Windsor

Reading

Wallingford

*Bucks*

Chipping Wicomb

*Cambridgeshire*

Cambridge Town

*Cornwall*

Dunhivid, alias Launceston

Leskard

Lestwithiel

Truro

Bodmin

Helston

*Cumberland*

Carlisle City

*Derbyshire*

Derby

*Devonshire*

Exeter City

Totnes

Plymouth

Barnstaple

Plympton

Tavistock

Clifton Dartmouth Hardness

*Dorsetshire*

Pool

Dorchester

Lyme-Regis

Weymouth

Melcomb-Regis

Bridport

Shafton, alias Shaftsbury

Wareham

*Essex*

Colchester

Malden

*Gloucestershire*

Gloucester

**Gloucester City**  
*Herefordshire*  
**Hereford City**  
**Lempster**  
*Hertfordshire*  
*Huntingdonshire*  
**Huntingdon**  
*Kent*  
**Canterbury City**  
**Rochester City**  
*Lancashire*  
*Leicestershire*  
**Leicester**  
*Lincolnshire*  
**Lincoln City**  
**Great Grimsby**  
**Stamford**  
**Grantham**  
*Middlesex*  
**City of London**  
*Norfolk*  
**Norwich City**  
**Lynn Regis**  
**Great Yarmouth**  
*Northamptonshire*  
**Northampton**  
*Northumberland*  
**Newcastle upon Tyne**  
*Nottinghamshire*  
**Nottingham**  
*Oxon*  
**Oxon City**  
*Rutlandshire*  
*Salop*  
**Salop Town**  
**Bruges, alias Bridgnorth**  
**Ludlow**  
**Great Wenlock**  
*Somersetshire*

**Bristol City**  
**Bath City**  
**Wells City**  
**Taunton**  
**Bridgwater**  
*Southampton*  
**Winchester City**  
**Southampton Town**  
**Portsmouth**  
*Staffordshire*  
**Stafford**  
**Newcastle under Line**  
*Suffolk*  
**Ipswich**  
**Dunwich**  
*Surry*  
**Southwark**  
**Blechingly**  
**Ryegate**  
**Guilford**  
**Gatton**  
*Sussex*  
**Chichester City**  
**Horsham**  
**Midhurst**  
**Lewes**  
**New Shoreham**  
**Bramber**  
**Steyning**  
**East Grinstead**  
**Arundel**  
*Warwickshire*  
**Coventry City**  
**Warwick**  
*Westmoreland*  
**Apulby**  
*Wiltshire*  
**City of New Sarum**  
**Wilton**

Downeton  
 Hindon  
 Heitefbury  
 Westbury  
 Calne  
 Devizes  
 Chippenham  
 Malmesbury  
 Cricklade  
 Great Bedwin  
 Ludgershall  
 Old Sarum  
 Wootton Bassett  
 Marlborough  
*Worcestershire*

Worcester City  
*Yorkshire*  
 York City  
 Kingston upon Hull  
 Scarborough  
 Port of Hastings (*Cinque Ports*)  
 Port of Dover  
 Port of Sandwich  
 Port of Hyeth  
 Port of New Romney  
 Town of Rye  
 Town of Winchelsea.

Counties and Boroughs 147.  
 Number of Members 296.

*A LIST of Counties and Boroughs to whom the Privilege of sending Representatives to Parliament was granted or restored by*

King HENRY VIII.

BUCKINGHAM Town

Cheshire

Chester City

*Monmouth*

Monmouth Town

Berwick upon Tweed

Orford

*Anglesey*

Beaumaris

Brecon

Town of Brecon

*Cardigan*

Town of Cardigan

*Carmarthen*

Town of Carmarthen

*Carnarvan*

Town of Carnarvan

*Denbigh*

Town of Denbigh

*Flint*

Town of Flint

*Glamorgan*

Town of Cardiffe

*Merioneth*

*Montgomery*

Town of Montgomery

*Pembroke*

Town

Town of Pembroke

Town of Haverford West

Radnor

Town of New Radnor

Calais in France.

N<sup>o</sup> of { Counties & Boroughs 32  
 { Members 38

King EDWARD VI.

Saltaſh

Camilford

Portpigham, *alias* Weſtlow

Grampound

Boſſiney

St. Michael

Newport

St. Albans

Maidſtone (*which forfeited its Privileges under Queen MARY, by adhering to Wyat's Rebellion, but reſtored by Queen ELIZABETH.*)

Preſton

Lancaſter

Wigan

Leverpool

Boſton

Weſtminſter

Thetford

Peterborough

Brackley

Petersfield

Litchfield

Heydon

Thirſk

N<sup>o</sup> of { Boroughs - 22.  
 { Members - 44.

Queen MARY.

Abington

Aileſbury

Penryn

St. Ives

Caſtleriſing

Higham Ferrars

Morpeth

Woodſtock

Banbury

Droitwich

Knareſborough

Rippon

Boroughbridge

Alborough

N<sup>o</sup> of { Boroughs - 14.  
 { Members - 25.

Queen ELIZABETH.

Eaſtlow

Tregony

Fowey

St. Germainſ

St. Mawes

Kellington

Beralſton

Corfe Caſtle

Cirenceſter

Maidſtone

Queenborough

Newtown

Clithero

Eaſt Retford

Biſhops Caſtle

Minehead

Yarmouth

Newport in the Isle of Wight

Stockbridge

Newton

Christ-Church

Lymington

Whitchurch

Andover

Tamworth

Aldborough

Sudbury

Eye

Haslemere

Richmond

Beverley

N° of { Boroughs - 31.  
 { Members - 62.

King JAMES I.

Agmondesham

Wendover

Great Marlow

Cambridge University

Tiverton

Harwich

Tewkesbury

Hertford

Oxford University

Ilchester

St. Edmondsbury

Evesham

Bewdley

Pontefract

N° of { Boroughs - 14.  
 { Members - 27.

King CHARLES I.

Seafood }  
 Weobly } 15 Car. I.  
 Milburn-Port }

Cockermouth }  
 Okehampton } 16 Car. I.  
 Honiton }  
 Ashburton }

Malton }  
 Northallerton } *Restored by Order of  
 the Long Parl. 16  
 Car. I.*

King CHARLES II.

Durham County }  
 Durham City } 25 Car. II.

Newark upon Trent 29 Car. II.

Queen ANNE.

Scotland, by the Union. Mem. 45.

Counties, Cities and Boroughs, which returned Members to Parliament at the Accession of King HENRY VIII.

N<sup>o</sup> of Counties, &c. 147. N<sup>o</sup> of Members 296.

*A LIST of Counties, Cities and Boroughs, to whom the Privilege of sending Members to Parliament was granted or restored by*

King Henry VIII.	-	-	-	-	-	32	-	-	-	-	38
King Edward VI.	-	-	-	-	-	22	-	-	-	-	44
Queen Mary	-	-	-	-	-	14	-	-	-	-	25
Queen Elizabeth	-	-	-	-	-	31	-	-	-	-	62
King James I.	-	-	-	-	-	14	-	-	-	-	27
King Charles I.	-	-	-	-	-	9	-	-	-	-	18
King Charles II.	-	-	-	-	-	3	-	-	-	-	6
Queen Anne, at the Union	-	-	-	-	-	-	-	-	-	-	45
											<hr/>
											561
Deduct Calais 1, and Maidstone 2 *.											3
											<hr/>
											558

\* Maidstone is reckoned twice in these Lists; once in the reign of King Edward VI. and again in Queen Elizabeth's.

APPENDIX, N<sup>o</sup> 4. (p. 208.)

*An Act for dissolveinge the Parlyament begun the 3d<sup>d</sup> of November, 1640, and for the callinge and bouldinge of a Parlyament at Westminster, the 25th of Aprill, 1660; passed March 16, 1659.*

**B**EE it enacted and declared by this present Parliament, and the authority thereof, That the Parliament begun and held at Westminster, the third day of November, in the yeare of our Lord God one thousand six hundred and forty, from and after the sixteenth day of March, in the yeare of our Lord God one thousand six hundred fifty-nine, bee dissolved, and is hereby dissolved to all intents and purposes.

And bee it further enacted by the authority aforesaid, That a Parliament bee summoned to bee holden, and be holden accordingly at Westminster, upon the five-and-twentieth day of April, in the yeare of our Lord God one thousand six hundred and sixty; and, that the forme of the writt for the summoning of the knights, citizens, and burghesses of England and Wales, and the Towne of Barwicke upon Tweed, and the Barons of the Cinq; Ports to y<sup>e</sup> said Parliament, bee as followeth, mutatis mutandis:—The keepers of the liberties of England by authority of Parliament, to the Sheriffe of the county of L. greeting: Whereas it is enacted, That a Parliament shall be held att Westminster, the five-and-twentieth day of Aprill next ensueing, therefore we command and firmly inioine you, that proclamation being made of the day and place aforesaid, in your next county to be holden after the receit of this our writt, you cause to be freely and indifferently chosen by them who shall be present at such election, Knights with their  
swords

swords girt, of the most fit and discrete persons, for the county aforesaid ; and of every citty of the said county, Cittizens, and of every burrough, Burghesses of the most discrete and sufficient, according to the forme of the statutes thereupon made and provided ; and the names of the said Knights, Cittizens, and Burghesses soe to bee chosen, whether they bee present or absent, you doe cause to bee inserted in certaine indentures thereupon to bee made betweene you and them that shall bee present att such election ; and that you cause them to come at the day and place aforesaid, soe that the said Knights for themselves, and the comonalty of the said county, and the said Cittizens and Burghesses for themselves, and the commonalties of the citties and burroughes aforesaid, severally may have full and sufficient power to doe and consent unto those things which then and there shall happen to bee ordained for the good and safetie of the church and Co<sup>m</sup>onwealth, soe that for defect of such like power, or by reason of improvident choice of the Knights, Cittizens, and Burghesses aforesaid, the said affaires may not remaine undone in any wise ; and wee will, that neither you nor any other Sheriffe of this Co<sup>m</sup>onwealth bee in any wise chosen ; and that the said choice in your full county aforesaid soe made, you certifie to us in our Chauncery, at the day and place aforesaid, distinctly and openly, without delay, under the seale of the county aforesaid, and the seales of them who shall bee present at such election, sending back to us the other part of the said indentures to these presents annexed, togeather with this writt. Witnesse, &c. And that the Lord Chauncellor, Lord Keeper, or Commissioners of the Greate Seale of England for the time being, are hereby authorized and required to cause writts under the Greate Seale of England to bee issued forth accordingly ; and this shall bee to them, and every of them, a sufficient warrant in that behalfe.

And bee it further enacted by the authority aforesaid, That the writts for electing of Barons of the Cinq Ports, with the antient



towns and members thereof, to sitt and serve in the said Parliament, shall bee directed to the Councell of State appointed by authority of Parliament, who shall cause the same to bee executed in such manner and forme as the Lord Warden of the Cinq Ports, or Constable of the Castle of Dover, heretofore used to doe : provided that nothing herein contained shall at any tyme, after the execution of the said writts, bee in any wise prejudiciall to any person or persons clayminge any right or title to the offices aforesaid, or either of them.

And bee it further enacted, That the Knights, Cittizens, Barons, and Burgeses soe chosen, shall appeare and serve in Parliament att the time and place aforesaid ; and the Sheriffes, and other officers and persons to whom it appertaineth, shall make retornes, and accept and receive rēturnes of such elections, according to the exigencie of the writt, under payne of incurring the penalty and forfeiture of one thousand pounds, mentioned in an Act made in the sixteenth yeare of the late King Charles, entituled, “ An Act for  
“ preventing of inconveniences happening by the long intermission  
“ of Parliaments,” to bee recovered in such manner as in the said Act is expressed more att large ; and in case any person or persons shall bee soe hardy as to advise, frame, contrive, serve, or put in execution any writts, proclamacōn, edict, act, restraint, inhibition, order, or warrant whatsoever, to hinder or interrupt the said elections, or by armed force, tumults, or otherwise, endeavor to disturbe or hinder the same, or the convening or sitting of the said Parliament, or any Member or Members thereof, that then hee or they, soe offending in any wise as aforesaid, shall incurre and suffer the paynes and penaltyes and forfeitures conteyned in the statute of provision and preminire, made in the sixteenth yeare of King Richard the Second, and shall from thenceforth bee disabled during his life to sitt or serve in any Parliament.

And bee it further enacted, That if any person or persons shall directly or indirectly, by himselfe or others, promise or give any  
sume

summe or summes of money, lands, gifts, gratuity, or reward to any citty, borrough, corporation, or person or persons whatsoever, having a voice or voices in any election, to procure himselfe or any other to bee elected a Member of the next Parliament, either before, att, or after such election, that then such person or persons, justly convicted thereof, shall be not only made incapable to sitt or vote in the said Parliament, as a Member, but likewise forfeit the summes of one thousand pounds; and the said elector or electors accepting any such summes of money, lands, gift, gratuity, or reward, to his owne, or the said citties, borroughes, or corporations, or other person or persons use, the summe of five hundred pounds a peece, the one moyety thereof for the use of the Commonwealth, the other moyety to the use of such person or persons who shall sue for the same, by writt, bill, plaint, or information, in any court of record at Westminster, wherein no wager of law, protection, or priviledge shall be allowed.

And be it further enacted, That no Sheriffe shall adiourne the county court from the place of their first meeting, without consent of the maior part of the freeholders there present, under the penalty of five hundred pounds, the one moyety to the Commonwealth, the other moyety to the party that will sue for the same, by bill, playnt, information, or otherwise, as aforesaid.

And be it further enacted, That all such person and persons who have advised, aided, or any wayes assisted or abetted the rebellion of Ireland, and all those who doe professe the popishe religion, are disabled, and shall bee incapable to bee elected Members to sitt in Parliament: And that all and every person and persons who have advised or voluntarily aided, abetted, or assisted in any warre against the Parliament since the first day of January, one thousand six hundred forty-one, and his or their sonnes, unlesse hee or they have since manifested their good affection to this Parliament, shall bee incapable to bee elected to serve Members in the next Parliament; and that hee w<sup>ch</sup> shall enter into the Parliament, who

is not qualified as aforesaid, shall bee deemed noe Knight, Cittizen, Burgesse, nor Baron for the Parliament, nor shall have any voice, but shall bee to all intents, constructions, and purposes, as if hee had never been retourned nor elected Knight, Cittizen, Burgesse, or Baron for the Parliament, and shall suffer such paines and penalties as if hee had presumed to sitt in the same, without election, retourne, or authoritie.

Provided always, and be it declared, That the single actings of this House, enforced by the pressing necessities of the present tymes, are not intended in the least to infringe, much lesse take away, that ancient native right w<sup>th</sup> the House of Peeres, consistinge of those Lords who did engage in the cause of the Parliament against the forces raised in the name of the late King, and soe continued until 1648, had and have to be a part of the Parliament of England..

## APPENDIX, N° 5, (p. 306.)

*Die Jovis, 15<sup>a</sup> die Februarii, 1676.*

**I**T was moved, That this House would consider, whether this Parliament be not dissolved, because the prorogation of this Parliament for fifteen months is contrary to the statute of 4th Edward III. and 36th Edward III. And after debate thereof, the question being put, Whether this debate shall be laid aside, it was resolved in the affirmative.

The Duke of Bucks, the Earl of Sarum, Earl of Shaftesbury, and the Lord Wharton were charged, for proposing, asserting, and maintaining that this Parliament is dissolved.

It was moved, That the question might be put, for adjourning the debate of this business till to-morrow morning, at ten of the clock.

The question being put, Whether this question shall be put, it was resolved in the affirmative.

Then the question being put for adjourning the debate of this business till to-morrow morning, at ten a clock, it was resolved in the affirmative.

*Die Veneris, 16<sup>a</sup> die Februarii, 1676.*

**T**HE House, according to the resolution yesterday, resumed the debate, touching the charge of the Duke of Bucks, Earl of Sarum, Earl of Shaftesbury, and the Lord Wharton, for proposing, asserting, and maintaining that this Parliament is dissolved. And for the method of proceeding in the business, it was moved that

the said four Lords should withdraw. And after the said Lords had spoken in their defence, the Earl of Sarum, Earl of Shaftesbury, and the Lord Wharton denied the Charge; after debate, the question being put, Whether the Duke of Bucks, Earl of Sarum, Earl of Shaftesbury, and the Lord Wharton shall withdraw, it was resolved in the affirmative. Upon this the aforesaid Lords withdrew; and the House took into consideration the nature of the offence of these Lords; and first concerning the Duke of Bucks, upon debate, the House was of opinion, that he was guilty of proposing, asserting, and maintaining that this Parliament is dissolved, and gave this judgment upon him, that he should be brought to the Bar of this House, and, upon his knees, should make his acknowledgment in these words, viz.

I do acknowledge, that my endeavouring to maintain that this Parliament is dissolved, was an ill-advised action; for which I humbly beg the pardon of the King's Majesty, and of this most honourable House.

After this, the House commanding the Gentleman Usher of the Black Rod to bring in the Duke of Bucks to the Bar, to receive this judgment, the Gentleman Usher gave the House an account that he had sought for the Duke of Bucks in all the rooms belonging to this House, but could not find him. And the House being informed that one Edward Cranfield did see the Duke of Bucks go towards the water side lately, the House called the said Mr. Cranfield in, and upon his oath he declared he did see the Duke of Bucks, about half an hour before, go towards the water side, but did not see him take water. The House took this as a great contempt, that he should thus absent himself without leave of the House, when he was to expect the pleasure of this House; and made this ensuing order, viz.

Ordered, by the Lords Spiritual and Temporal in Parliament assembled, That the Gentleman Usher of the Black Rod attending

ing this House, shall forthwith attach the person of George Duke of Bucks, and bring him in safe custody to the Bar of this House, to-morrow, at ten of the clock in the forenoon, and this shall be a sufficient warrant on that behalf:

To the Gentleman Usher of the Black Rod attending this House, his Deputy and Deputies; and to all Mayors, Justices, and other his Majesty's officers, to be aiding and assisting in the execution hereof.

Next the House took into consideration the offence of the Earl of Sarum; and considering that his Lordship before his withdrawing had denied, upon his honour, his asserting and maintaining that this Parliament is dissolved, did order that the Earl of Sarum shall be called to his place, and that the Lord Chancellor shall say to him as followeth:

My Lord of Salisbury,

Since your withdrawing, the House hath considered of your Lordship's demeanor in this place; and, though they do not find that your Lordship hath positively asserted, and maintained, that the Parliament is dissolved, and therein give credit to your Lordship's disclaimer upon your honour, yet they do observe your Lordship did assert and maintain that this prorogation is illegal; at which the House have taken very great offence, and commanded me to reprehend your Lordship for it; and to let you know they look upon it not only as an offence to the House, but a very great offence against the King; and therefore they require your Lordship to ask pardon of the King's Majesty, and pardon of this House.

His Lordship being in his place, the Lord Chancellor read the paper unto him, but his Lordship refusing to make the said submission,

mission, he was commanded to withdraw; and then the House, taking this as a contempt to his Majesty, and this House, ordered that he shall be brought to the Bar as a delinquent, and committed to the Tower of London, during the pleasure of the King and this House; and accordingly his Lordship was brought to the Bar, and kneeled, and received the said sentence.

After this the House took into consideration the offence of the Earl of Shaftesbury; and, upon debate, the House was of opinion that he was guilty of asserting and maintaining that this Parliament is dissolved, and gave this judgment upon him: that he should be brought to the Bar of this House, and, upon his knees, should make his acknowledgment in these words, viz.

I do acknowledge, that my endeavouring to maintain that this Parliament is dissolved, was an ill-advised action, for which I humbly beg the pardon of the King's Majesty, and of this most honourable House.

His Lordship being accordingly brought to the Bar, the Lord Chancellor having read the said acknowledgment to him, and required him to make it at the Bar, which his Lordship refused to do, thereupon he was commanded to withdraw; and then the House, taking this as a contempt to his Majesty, and this House, ordered that he shall be brought to the Bar as a delinquent, and committed to the Tower of London, during the pleasure of the King and this House; and accordingly his Lordship was brought to the Bar, and kneeled, and received the said sentence.

Then the House took into consideration the offence of the Lord Wharton; and considering that his Lordship, before his withdrawing, had denied, upon his honour, his asserting and maintaining that this Parliament is dissolved, did order that the Lord Wharton shall be called to his place, and that the Lord Chancellor shall say to him as followeth:

My

My Lord Wharton,

Since your withdrawing, the House hath considered of your Lordship's demeanor in this place; and, though they do not find that your Lordship hath positively asserted, and maintained, that this Parliament is dissolved, and therein give credit to your Lordship's disclaimer upon your honour, yet they do observe your Lordship did assert and maintain that this prorogation is illegal; at which the House hath taken very great offence, and commanded me to reprehend your Lordship for it, and to let you know they look upon it not only as an offence to the House, but a very great offence against the King; and therefore they require your Lordship to ask pardon of the King's Majesty, and pardon of this House.

His Lordship being in his place, the Lord Chancellor read the said paper unto him; which submission his Lordship not making, but saying that, before his withdrawing, he had begged pardon both of the King and the House, the Lord Chancellor said to his Lordship, that he was required by the House to make that submission now; but the Lord Wharton making still no answer, but that he had already done it, was commanded to withdraw. And then the House, taking this as a contempt to his Majesty, and this House, ordered that he shall be brought to the Bar as a delinquent, and committed to the Tower of London, during the pleasure of the King, and this House. And accordingly his Lordship was brought to the Bar, and kneeled, and received the said sentence.

Ordered, by the Lords Spiritual and Temporal, in Parliament assembled, that the Gentleman Usher of the Black Rod, attending this House, shall take into his custody the bodies of James Earl of Salisbury, Anthony Ashley Earl of Shaftesbury, and Philip Lord Wharton, Members of this House, and them in safety convey to the Tower of London, for their high contempts committed



committed against this House, there to remain in safe custody during his Majesty's pleasure, and the pleasure of this House.

To the Gentleman Usher of the Black Rod attending this House, his Deputy and Deputies.

Ordered, by the Lords Spiritual and Temporal, in Parliament assembled, that the Constable of his Majesty's Tower of London, his Deputy or Deputies, shall receive the bodies of James Earl of Salisbury, Anthony Ashley Earl of Shaftesbury, and Philip Lord Wharton, Members of this House, and keep them in safe custody within the said Tower, during his Majesty's pleasure, and the pleasure of this House, for their high contempts committed against this House; and this shall be a sufficient warrant on that behalf.

To the Constable of the Tower, his Deputy and Deputies, &c.

*Die Sabbathi, 17<sup>o</sup> die Februarii, 1676.*

THE Gentleman Usher of the Black Rod gave the House this account, That, in pursuance of the order of this House yesterday, he had, both last night and this morning, been at the house of the Duke of Bucks, but he cannot find him; he came not home last night, and his servants know not where he is. Whereupon the House made this ensuing order:

Whereas it was ordered yesterday, that the Gentleman Usher of the Black Rod should bring George Duke of Bucks to the Bar of this House in custody, who departed hence yesterday, in contempt of this high Court: And whereas the said Duke doth still abscond himself; and that the said Gentleman Usher informs this House, that the said Duke is not to be found at his own house,

nor

nor came thither all the last night ; and that he cannot learn where to find the said Duke ; it is therefore ordered by the Lords Spiritual and Temporal, in Parliament assembled, that unless the said Duke of Bucks shall render himself this morning (sitting the House of Peers) that his Majesty be humbly desired by this House to issue out his royal proclamation for stopping all the ports, and for seizing and apprehending the person of the said Duke wherever he shall be found, and him to bring before the House of Peers, if this session of Parliament shall then be continuing ; or otherwise to carry the said Duke directly to the Tower of London, there to remain a prisoner, until he be from thence delivered by due course of law.

This day, as the House was in business, the Duke of Bucks came in, and went to his place ; at which divers Lords called upon him to withdraw, which he did : Then the House commanded the Gentleman Usher of the Black Rod to bring the Duke of Bucks to the Bar, as a delinquent ; which being done, the Lord Chancellor told him : My Lord, I am to tell you in what condition your affairs stand here. My Lords find you highly guilty, in asserting that this Parliament is dissolved, and very active in maintaining it ; and have therefore ordered that you make this acknowledgment at the Bar, which I shall read unto you :

I do acknowledge, that my endeavouring to maintain that this Parliament is dissolved, was an ill-advised action ; for which I humbly beg the pardon of the King's Majesty, and of this most honourable House.

The Duke of Bucks. refusing to make the said acknowledgment, was commanded to withdraw ; and then the House, taking this as a contempt to his Majesty, and this House, ordered that he should be brought to the Bar, as a delinquent, and committed to the Tower of London, during the pleasure of the King, and this

House; and accordingly his Lordship was brought to the Bar, and kneeled, and received the said sentence.

Ordered, by the Lords Spiritual and Temporal, in Parliament assembled, that the Gentleman Usher of the Black Rod, attending this House, shall take into his custody the body of George Duke of Bucks, a Member of this House, and him in safe custody convey to the Tower of London, for his high contempt committed against this House, there to remain in safe custody during his Majesty's pleasure, and the pleasure of this House.

To the Gentleman Usher of the Black Rod,  
attending this House, his Deputy and  
Deputies.

Ordered, by the Lords Spiritual and Temporal, in Parliament assembled, that the Constable of his Majesty's Tower of London, his Deputy and Deputies, shall receive the body of George Duke of Bucks, a Member of this House, and keep him in safe custody, within the said Tower, during his Majesty's pleasure, and the pleasure of this House, for his high contempt committed against this House, and this shall be a sufficient warrant on that behalf.

To the Constable of the Tower, his  
Deputy and Deputies, &c.

Whereas George Duke of Bucks, James Earl of Salisbury, Anthony Ashley Earl of Shaftesbury, and Philip Lord Wharton, stand committed prisoners to the Tower of London, by order of this House; it is this day further ordered, by the Lords Spiritual and Temporal, in Parliament assembled, that the Constable of the said Tower, his Deputy and Deputies, do take care that the said Lords, remaining prisoners, be kept severally and apart; and that they be not suffered to meet together (unless it be at church); and that no persons be suffered to visit them, without the leave of  
§ this

this House, except their necessary servants and attendants: for which this shall be a sufficient warrant.

To the Constable of the Tower of London, his Deputy and Deputies.

*Die Lunæ, 16<sup>o</sup> die Aprilis, 1677.*

UPON reading the petition of Philip Lord Wharton (now a prisoner in the Tower by order of this House) shewing that he is deeply sensible of the displeasure he is under; and prayeth, that, in regard of his bodily infirmities, and the affairs of his family, which suffer much by his imprisonment, he may have his liberty granted him in such manner as this House shall think fit; it is ordered, that this House refers the Petitioner to apply himself to his Majesty, and humbly submit to what his Majesty, in his good pleasure, shall think fit to do thereupon.

*Die Lunæ, 28<sup>o</sup> die Januarii, 1677.*

The Lord Chancellor further acquainted the House, That three of those Lords, who stand committed to the Tower of London by this House, viz. the Duke of Bucks, the Earl of Salisbury, and the Lord Wharton, have presented their humble petitions to his Majesty, and therein have made their humble submission to his Majesty, who thereupon hath been graciously pleased to release them, but conditionally that they make their submission to this House, when they shall be required.

Then a petition was humbly presented to this House from the Duke of Buckingham, which was read, as followeth:

To the Right honourable the Lords Spiritual and Temporal,  
in Parliament assembled.

The humble Petition of George Duke of Buckingham,

Sheweth,

THAT your Lordships having committed your petitioner prisoner to the Tower of London, because he did not obey your Lordships' order, and he hath suffered much by reason thereof.

In obedience therefore to your Lordships, he doth acknowledge, that his endeavouring to maintain that the Parliament is dissolved, was an ill-advised action; for which he humbly begs the pardon of the King's Majesty, and of this most honourable House; and prays,

That your Lordships would be pleased to discharge him from the said commitment, and restore him to your Lordships' favour; and your petitioner shall pray, &c.

BUCKINGHAM.

The House being made acquainted that the Duke of Bucks was not far off, if their Lordships would please to permit him to attend them presently; the House agreed to it.

The House being informed that the Duke of Bucks attends without, to make what submission this House shall please to direct; the Lords ordered he should be brought in; and, being come to the Bar, the Lord Chancellor told him, by directions of the House, as followeth,

My Lord,

My Lords have received your petition, and are well pleased to find your Lordship disposed to give them the satisfaction they expected; the submission the House expect you should make, I shall read to you, as it is entered in the Journal; which you are to declare at the Bar; viz.

I do

I do acknowledge that my endeavouring to maintain that this Parliament is dissolved, was an ill-advised action; for which I humbly beg the pardon of the King's Majesty, and of this most honourable House.

The Duke of Bucks having read the abovesaid declaration at the Bar, he came in, and was admitted to his place.

*Die Lunæ, 4<sup>o</sup> die Februarii, 1677.*

IT being signified to the House, that the Earl of Salisbury was without to receive their Lordships' commands, and to do what their Lordships shall direct for his submission; hereupon the House, perusing the Journal book, found that his Lordship was required, the 16th of February, 1676, that he should ask pardon of his Majesty, and this House, for asserting and maintaining that the prorogation of this Parliament was illegal. The Earl of Salisbury being directed to come to his place, the Lord Chancellor told him, that the House expected he should make the same submission as was formerly required of him. Whereupon the Earl of Salisbury said, In obedience to your Lordships' command, I do ask pardon of his Majesty, and this House, for asserting and maintaining that the prorogation of this Parliament was illegal.

The House being satisfied with this submission, his Lordship sat in his place as a Peer.

*Die Jovis, 7<sup>o</sup> die Februarii, 1677.*

IT being signified to the House, that the Lord Wharton was without, to receive their Lordships' commands, and to do what their Lordships shall direct for submission; hereupon the House, perusing the Journal book, found that his Lordship was required, the 16th of February, 1676, that he should ask pardon of his Majesty, and

and this House, for asserting and maintaining that the prorogation was illegal. The Lord Wharton being directed to come to his place, the Lord Chancellor told him, that the House expected he should make the same submission as was formerly required of him. Whereupon the Lord Wharton said, In obedience to the commands of this House, I do ask the pardon of his Majesty, and this House, for having offended them by what I unadvisedly said, concerning the illegality of the late prorogation.

*Die Mercurii, 20<sup>o</sup> die Februarii, 1677.*

A Petition from the Earl of Shaftesbury was presented to the House, and read, as followeth :

'To the Right honourable the Lords Spiritual and Temporal,  
in Parliament assembled.

The humble Petition of Anthony Earl of Shaftesbury,  
Sheweth,

That your Petitioner, on the 16th of February, 1676, was committed prisoner to the Tower of London by your Lordships, because he did not obey your Lordships' order, where he hath continued under close confinement, to the great decay of his health, and danger of his life, as well as prejudice of his estate and family.

In all humble obedience, therefore, unto your Lordships, he doth acknowledge, that his endeavouring to maintain that this Parliament is dissolved, was an ill-advised action, for which he humbly begs the pardon of the King's Majesty, and of this most honourable House ; and doth, in all humble duty and observance to your Lordships, beseech you to believe, that he would not do any thing willingly to incur your displeasure.

Wherefore

Wherefore your petitioner, in all humble duty and obedience both unto his Majesty and your Lordships, hath made his humble submission and acknowledgment, in his most humble petition unto the King's most sacred Majesty, and is ready to make his farther submission and acknowledgment to his Majesty, and to this honourable House, according to the directions thereof: And he doth most humbly implore your Lordships, that you will be pleased to restore him into your favour, and discharge him from his imprisonment.

And your petitioner, as in duty bound, shall, &c.

SHAFTESBURY.

This being read, the Lord Chancellor did let the House know, that his Majesty hath received a third petition from the Earl of Shaftesbury, more submissive in form than the two first; but his Majesty, understanding that the Earl of Shaftesbury hath endeavoured to free himself from the censure of this House, by appealing to the King's Bench, to have their judgment thereupon during the late adjournment, doth not think fit as yet to signify his pleasure as to his discharge, till this House hath taken that matter into consideration.

After a long debate hereof, the question was proposed, Whether an Address shall be now made to his Majesty, to discharge the Earl of Shaftesbury from his imprisonment, upon his petitions to his Majesty, and to this House.

Then the question being put, Whether this question shall be put, it was resolved in the negative.

After this the House considered the matter of the Earl of Shaftesbury's appealing from this House to the King's Bench, to be released by Habeas Corpus; and after debate, it is ordered, that the further debate of this business is adjourned till to-morrow morning; at which time the records of the Court of King's Bench,



Bench, touching the Earl of Shaftesbury's business there, shall be brought into this House; and the Judges are also to attend this House.

*Die Jovis, 21<sup>a</sup> die Februarii, 1677.*

This day the House resumed the debate concerning the Earl of Shaftesbury's endeavouring to free himself from his commitment by this House, by a Habeas Corpus in the Court of King's Bench; and for the better knowledge of the matter of fact, the records of the King's Bench were produced, by which it did appear, that two rules of that Court were obtained upon the motion of the Earl of Shaftesbury's Counsel, in Trinity Term, 1677; and the returns thereupon were read, by which it did appear that the Earl of Shaftesbury was committed the 16th of February, 1676, by this House, for a contempt; and then the Remittitur of the Earl of Shaftesbury to the Tower was also read.

After this a petition of the Earl of Shaftesbury was presented to this House, and read; wherein his Lordship took notice of an order of this House of the 20th instant, for bringing the records of the Court of King's Bench into this House, concerning the matter of the Habeas Corpus brought by him; that he takes himself to be greatly concerned, and to have a right to be present, and heard, when any debate of any new matter against him be entered upon; that he cannot pretend, but he may have erred for want of a precedent to guide him; and being deprived of the benefit of Counsel, by reason of his close confinement, and being resolved not to do any thing willingly which might in the least offend his Majesty, or their Lordships, he humbly takes this opportunity to give further evidence thereof, by casting himself at their Lordships' feet; and as he hath humbly begged the pardon of his Majesty, so he  
begs

begs also the pardon of this House, for having offended them in any thing whatsoever.

After a long debate hereof, the House made these resolutions following:

Resolved and declared, That it is a breach of the privilege of this House, for any Lord committed by this House to bring a Habeas Corpus in any inferior Court, to free himself from that imprisonment during the Session of Parliament.

Resolved, That the Earl of Shaftesbury shall have liberty to make his full defence, notwithstanding the resolution and declaration aforesaid.

*Die Veneris, 22<sup>a</sup> die Februarii, 1687.*

The House taking into consideration, when the Earl of Shaftesbury shall come to this House, and in what manner, and what shall be said unto him; it is ordered, that he shall be brought to the Bar on Monday next, by the Constable of the Tower, or his deputy; and then the Lord Chancellor shall say unto him to the same effect as his Lordship was directed this day by the House.

Ordered, by the Lords Spiritual and Temporal in Parliament assembled, That the Constable of his Majesty's Tower of London, or his deputy, be, and is hereby required to bring Anthony Earl of Shaftesbury (now a prisoner in the said Tower, for his high contempt committed against this House) to the Bar, on Monday the 25th day of this instant February, at ten of the clock in the forenoon, and this shall be a sufficient warrant on that behalf.

To the Constable of his Majesty's Tower of London, his Deputy and Deputies, and every of them.

*Die Lunæ 25<sup>o</sup> die Februarii, 1677.*

THE Earl of Northton, Constable of the Tower of London, acquainted the House, that in obedience to their Lordships' order, he hath brought the Earl of Shaftesbury, who is without, ready to receive their Lordships' commands.

Upon this the Lord Chancellor desired to know the pleasure of the House, what he shall say to the Earl of Shaftesbury, when he comes to the Bar; which words were written down, and being read, were approved of.

Then it was moved, that the Earl of Shaftesbury might answer (as an aggravation of his offence) for some words which he spake in the Court of King's Bench, when he appeared upon his Habeas Corpus, which was conceived to be contrary to the privilege of this House; and that witnesses might be heard to prove the same, before the Earl of Shaftesbury be called to the Bar: But this was left to be as it is, until the Earl of Shaftesbury had been called to the Bar, and his answer received to what he stands already charged with.

The Earl of Shaftesbury being brought to the Bar, and having kneeled, the Lord Chancellor said to him as was afore directed by the House; viz.

My Lord of Shaftesbury,

The Lords have received a petition from your Lordship, taking notice of the contempt for which you are committed by this House, together with your submission to the judgment of this House: And while the Lords were taking into consideration that petition, there were brought before this House some records of the King's Bench, whereby it appears that your Lordship endeavoured, by

Habeas

Habeas Corpus, to free yourself by the judgment of that inferior Court, from the censure of this. I am to acquaint your Lordship, that this House has resolved and declared, that for any Lord committed by this House, to bring a Habeas Corpus in any inferior Court, to free himself from that commitment during the Session of Parliament, is a breach of the privilege of this House: But withal, their Lordships have likewise resolved, that it shall be permitted to your Lordship to make your full defence, notwithstanding the resolution and declaration aforesaid; and therefore I am commanded to ask your Lordship, what you are pleased to say for yourself upon the whole matter.

Whereupon the Earl of Shaftesbury answered to this effect:

My Lords,

I have presumed to offer two petitions to this honourable House; the first your Lordship mentions I do again here personally renew, humbly desiring that I may be admitted to make that submission and acknowledgment your Lordships were pleased to order; and that after a twelvemonth's close imprisonment, to a man of my age and infirmities, your Lordships would pardon the folly or unadvisedness of any of my words or actions: And as to my second petition, I most humbly thank your Lordships for acquainting me with your resolution and declaration in that point; and though liberty be in itself very desirable, and, as my physician (a very learned man) thought, absolutely necessary to the preservation of my life, yet I do profess to your Lordships upon my honour, that I would have perished rather than have brought my Habeas Corpus, had I then apprehended, or been informed, that it had been a breach of the privilege of this honourable House. It is my duty, it is my interest, to support your privileges; I shall never oppose them. My Lords, I do fully acquiesce in the reso-

lution and declaration of this honourable House: I go not about to justify myself, but cast myself at your Lordships' feet; acknowledge my error, and humbly beg your pardon, not only for having brought my Habeas Corpus, but for all other my words or actions, that were in pursuance thereof, and proceeding from the same error and mistake.

Then his Lordship withdrew; and after some debate the question proposed was, Whether witnesses shall be now called in.

The question being put, Whether this question shall be now put, it was resolved in the affirmative.

Then the question being put, Whether the witnesses shall be now called in, it was resolved in the affirmative.

There being a paper made mention of in the House, which was said to be a copy of what the Earl of Shaftesbury said in the King's Bench, but not permitted to be read, Robert Blaney was called in, and sworn as a witness; who being asked, Whether he was present in the Court of King's Bench when the Earl of Shaftesbury moved for his Habeas Corpus; and whether he heard all that the Earl of Shaftesbury said there?

He answered to this effect, That he was present in the King's Bench when the Earl of Shaftesbury was there, and he heard the most part what his Lordship said, but he cannot tell now what he said, but he took some notes, and that afternoon compared notes with Mr. Rushworth, who also had taken notes; and thereupon they perfected a copy, which he gave to the Lord Treasurer. He also said, that he cannot for a thousand worlds say, that he heard all that is in the paper, nor he cannot now say what it was that he took, and what he had from Mr. Rushworth, it being so long since, by reason of the many interlineations made in the paper, by comparing notes with Mr. Rushworth.

Then the said Robert Blaney withdrew.

After

After this, the House agreed what acknowledgment the Earl of Shaftesbury should make at the bar for his offences; which if his Lordship should make, the House would then declare their satisfaction in his submission and acknowledgment; the submission is as followeth:

I do acknowledge that my endeavouring to maintain that the Parliament is dissolved, was an ill-advised action, for which I humbly beg the pardon of the King's Majesty, and of this most honourable House: And I do also acknowledge, that my bringing of an Habeas Corpus in the King's Bench, during this session, was a high violation of your Lordships' privileges, and a great aggravation of my former offence. For all which I likewise most humbly beg the pardon of this most honourable House.

The Earl of Shaftesbury was brought again to the Bar; and the Lord Chancellor told him, the Lords had prepared a particular acknowledgment, which the House expected he should make; and read the same to him: And then the Earl of Shaftesbury made the said acknowledgment in these words; viz.

I do acknowledge, that my endeavouring to maintain that the Parliament is dissolved, was an ill-advised action, for which I humbly beg the pardon of the King's Majesty, and of this most honourable House: And I do also acknowledge that my bringing of an Habeas Corpus in the King's Bench, during this session, was a high violation of your Lordships' privileges, and a great aggravation of my former offence. For all which I likewise most humbly beg the pardon of this most honourable House.

His Lordship being again withdrawn;

It is ordered, that the Lords with the white staves now present, wait on his Majesty, to give his Majesty an account, that this  
House

House hath received satisfaction from the Earl of Shaftesbury, in the matter of the Habeas Corpus, and the other contempt for which he stood imprisoned; and are humble suitors to his Majesty, that he would be pleased to discharge him from his imprisonment: And that their Lordships do acquaint the House to-morrow what they have done in this matter.

Ordered, That the Earl of Shaftesbury be in the mean time remitted to the Tower.

*Die Martis, 26<sup>o</sup> die Februarii, 1677.*

The Lord Treasurer reported to the House, that the Lords with white staves, according to the order of this House, have attended his Majesty, to give his Majesty an account, that this House hath received satisfaction from the Earl of Shaftesbury in the matter of the Habeas Corpus, and the other contempt, for which he stood imprisoned; and are humble suitors to his Majesty, that he will be pleased to discharge him from his imprisonment: To which his Majesty was pleased to give this answer, that he will give order for the Earl of Shaftesbury's discharge.

*Die Sabbati, 13<sup>o</sup> die Novembris, 1680.*

WHEREAS the Duke of Buckingham, Earls of Salisbury and Shaftesbury, and the Lord Wharton, were, contrary to the freedom of Parliament, committed to prison, by order of the Lords House, of the 15th of February, 1676; whereupon followed a series of many unprecedented proceedings, derogatory to the authority of Parliament, and of evil example and precedent to posterity \* :

\* I do not find in Burnet's History, Rapin, or Hume, any notice taken of this very extraordinary proceeding; or why the subject was taken up again at this time.

For vacating, making void, and destroying such precedents for ever, and in vindication of the authority and freedom of Parliament, upon complaint hereof made, and due consideration and debate thereof by the Lords Spiritual and Temporal in Parliament assembled; it is ordered, decreed, and adjudged, That the said order and proceedings concerning the said Lords were unparliamentary, from the beginning, and in the whole progress thereof; and therefore are all ordered to be vacated (by virtue of this judgment) in the Journal books of this House, that the same, or any of them, may never be drawn into precedent for the future.



## A P P E N D I X, N° 6. (p. 327.)

*Extracts from Commons Journal.**January 26, 1693.*

“ **T**HE House, according to the order of the day, resolved  
 “ itself into a Committee of the whole House, to consider  
 “ of the state of the kingdom.

“ Mr. Speaker left the Chair.

“ Colonel Granville took the Chair of the Committee.

“ Mr. Speaker resumed the Chair.

“ Colonel Granville reported from the Committee, That they  
 “ had come to several resolutions; which they had directed him  
 “ to report to the House, when the House will please to receive  
 “ the same.

“ Resolved, That the said report be now received.

“ Colonel Granville reported the said resolutions of the Com-  
 “ mittee of the whole House: the which he read in his place;  
 “ and afterwards delivered in at the Clerk’s table: where the same  
 “ were read, and are as followeth: viz.

“ Resolved, That it is the opinion of this Committee, that  
 “ whoever advised the King not to give the Royal assent to the  
 “ Act touching free and impartial proceedings in Parliament, which  
 “ was to redress a grievance, and take off a scandal upon the pro-  
 “ ceedings of the Commons in Parliament, is an enemy to their  
 “ Majesties and the kingdom.

“ Resolved, That it is the opinion of this Committee, that a  
 “ representation be made to his Majesty, humbly to lay before  
 “ him, how few the instances have been, in former reigns, of deny-  
 “ ing

“ ing the Royal assent to Bills for redress of grievances ; and the  
 “ great grief of the Commons for his not having given the Royal  
 “ assent to several public Bills ; and particularly to the Bill, inti-  
 “ tuled, ‘ An Act touching free and impartial proceedings in Par-  
 “ liament ;’ which tended so much to the clearing the reputation  
 “ of this House, after their having so freely voted to supply the  
 “ public occasions.

“ The first of the said resolutions being read a second time ;  
 “ Resolved, That the House doth agree with the Committee in  
 “ the said resolution, That whoever advised the King not to give  
 “ the Royal assent to the Act touching free and impartial proceed-  
 “ ings in Parliament, which was to redress a grievance, and take off  
 “ a scandal upon the proceedings of the Commons in Parliament,  
 “ is an enemy to their Majesties and the kingdom.

“ The said resolution being read a second time ;  
 “ Resolved, That the House doth agree with the Committee in  
 “ the said resolution, that a representation be made to his Majesty,  
 “ humbly to lay before him, how few the instances have been, in  
 “ former reigns, of denying the Royal assent to Bills for redress of  
 “ grievances ; and the great grief of the Commons for his not  
 “ having given the Royal assent to several public Bills ; and parti-  
 “ cularly to the Bill, intituled, ‘ An Act touching free and im-  
 “ partial proceedings in Parliament ;’ which tended so much to the  
 “ clearing the reputation of this House, after their having so freely  
 “ voted to supply the public occasions.

“ Resolved, That a Committee be appointed to prepare and  
 “ draw up an humble representation to his Majesty upon the said  
 “ resolutions ; and to report the same to this House.

“ And it is referred to Colonel Granville, Mr. Gwyn, &c. &c.  
 “ &c. or any five of them : And they are to meet to-morrow  
 “ morning at eight o’clock in the Speaker’s chamber.

*January 27.*

“ Ordered, That the Serjeant at Arms do go into Westminster  
 “ Hall, and to the several courts there, and into the Court of  
 “ Requests, and require the immediate attendance of the Members  
 “ of this House.

“ And he went with the Mace accordingly.

“ And being returned ;

“ Colonel Granville reported from the Committee to whom it  
 “ was referred to draw up and prepare an humble representation  
 “ to his Majesty, upon the resolutions made by this House, that  
 “ they had prepared the same accordingly ; which they had di-  
 “ rected him to report to the House ; and which he read in his  
 “ place ; and afterwards delivered in at the Clerk's table : Where  
 “ the same was read, and is as followeth : viz.

‘ May it please your Most Excellent Majesty,

‘ We, your Majesty's most dutiful and loyal subjects, the Com-  
 ‘ mons in Parliament assembled, think ourselves bound, in duty to  
 ‘ your Majesty, humbly to represent, that the usage in Parliament  
 ‘ in all times hath been, that what Bills have been agreed by both  
 ‘ Houses, for the redress of grievances, or other public good, have,  
 ‘ when tendered to the throne, obtained the Royal assent ; and  
 ‘ that there are very few instances, in former reigns, where such  
 ‘ assent, in such cases, hath not been given ; and those attended  
 ‘ with great inconveniences to the Crown of England : especially  
 ‘ where the same hath been withheld by insinuations of particular  
 ‘ persons, without the advice of the Privy Council ; thereby creat-  
 ‘ ing great dissatisfactions and jealousies in the minds of the  
 ‘ people.

‘ Your Commons therefore, out of their sincere desire of the  
 ‘ welfare of your Majesty and your government, and that you may  
 † always

‘ always reign, in prosperity and happiness, in the affection of your  
 ‘ subjects, cannot without grief of heart, reflect, that, since your  
 ‘ Majesty’s accession to the Crown, several public Bills \*, made  
 ‘ by advice of both Houses of Parliament, have not obtained the  
 ‘ Royal assent; and, in particular, one Bill, intituled, ‘ An Act  
 ‘ touching free and impartial proceedings in Parliament,’ which  
 ‘ was made to redress a grievance, and take off a scandal relating  
 ‘ to the proceedings of your Commons in Parliament, after they  
 ‘ had freely voted great supplies for the public occasions: which  
 ‘ they can impute to no other cause, than your Majesty’s being  
 ‘ unacquainted with the constitutions of Parliament, and the infi-  
 ‘ nuations of particular persons, who take upon them, for their  
 ‘ own particular ends, to advise your Majesty contrary to the advice  
 ‘ of Parliament; and therefore cannot but look on such as enemies  
 ‘ to your Majesty and your kingdom.

‘ We beg, Sir, you will be pleased to consider us as answerable  
 ‘ to those we represent; And it is from your goodness we must  
 ‘ expect arguments to soften to them, in some measure, the neces-  
 ‘ sary hardships they are forced to undergo in this present conjunc-  
 ‘ ture: And therefore humbly beseech your Majesty, for the re-  
 ‘ moving of all jealousies from your people, without which the  
 ‘ Parliament will be less able to serve your Majesty, or to sup-  
 ‘ port the government, to be pleased to follow the course of the  
 ‘ best of your predecessors; and to direct some expedient, where-  
 ‘ by your Majesty, your Parliament, and People, may reap the  
 ‘ fruit designed by that Bill, to which your Majesty, by ill advice,  
 ‘ was pleased so lately to deny the Royal assent.’

“ The first paragraph being read a second time, was, upon the  
 “ question put thereupon, agreed unto by the House.

\* This alludes to the 24th of February, 1691, where the King refused the Royal assent to the Bill for ascertaining the commissions and salaries of the Judges; and to

another instance, on the 14th of March, 1692, where the Royal assent was refused to two Bills.

“ The second paragraph being read a second time ;

“ An amendment was proposed to be made therein, by leaving out, ‘ Your Majesty’s being unacquainted with the constitutions of Parliament, and.’

“ And the same was, upon the question put thereupon, agreed unto by the House.

“ And then the said paragraph was, upon the question put thereupon, agreed unto by the House.

“ The third paragraph being read a second time ;

“ And the question being put, that the House do agree to the said paragraph ;

“ It passed in the negative.

“ Ordered, That Mr. Boyle, Mr. Hutchinson, &c. &c. &c. do withdraw into the Speaker’s chamber, and prepare a conclusion for the said representation, upon the debate of the House, and present the same to the House.

“ And the Members withdrew accordingly.

“ Mr. Vice Chamberlain reported, That the Members, who had withdrawn, had prepared a conclusion to the said representation ; which they had directed him to report to the House ; and which he read in his place ; and afterwards delivered in at the Clerk’s table : where the same was twice read, and agreed unto by the House ; and is as followeth :

‘ Upon these considerations, we humbly beseech your Majesty to believe, that none can have so great a concern and interest in the prosperity and happiness of your Majesty and your government, as your two Houses of Parliament : And do therefore humbly pray, that, for the future, your Majesty would be graciously pleased to hearken to the advice of your Parliament, and not to the secret advices of particular persons, who may have private interests of their own, separate from the true interest of your Majesty and your people.’

“ Resolved,

“ Resolved, That the said representation, so amended, be agreed  
“ unto by the House ; and is as followeth : viz.

‘ May it please your Most Excellent Majesty,

‘ We, your Majesty’s most dutiful and loyal subjects, the Com-  
‘ mons in Parliament assembled, think ourselves bound, in duty to  
‘ your Majesty, humbly to represent, that the usage in Parliament  
‘ in all times hath been, that what Bills have been agreed by  
‘ both Houses, for the redress of grievances, or other public good,  
‘ have, when tendered to the throne, obtained the Royal assent ;  
‘ and that there are very few instances, in former reigns, where  
‘ such assent, in such cases, hath not been given ; and those at-  
‘ tended with great inconveniences to the Crown of England, .  
‘ especially where the same hath been withheld by insinuations of  
‘ particular persons, without the advice of the Privy Council ;  
‘ thereby creating great dissatisfaction and jealousies in the minds  
‘ of your people.

‘ Your Commons therefore, out of their sincere desire of the  
‘ welfare of your Majesty and your government, and that you may  
‘ always reign, in prosperity and happiness, in the affection of your  
‘ subjects, cannot without grief of heart reflect, that, since your  
‘ Majesty’s accession to the Crown, several public Bills, made by  
‘ advice of both Houses of Parliament, have not obtained the  
‘ Royal assent ; and, in particular, one Bill, intituled, ‘ An Act  
‘ touching free and impartial proceedings in Parliament ;’ which  
‘ was made to redress a grievance, and take off a scandal relating  
‘ to the proceedings of your Commons in Parliament, after they  
‘ had freely voted great supplies for the public occasions ; which  
‘ they can impute to no other cause than the insinuations of par-  
‘ ticular persons, who take upon them, for their own particular  
‘ ends, to advise your Majesty contrary to the advice of Parlia-  
‘ ment :

ment; and therefore cannot but look on such as enemies to your Majesty and your kingdom.

Upon these considerations, we humbly beseech your Majesty to believe, that none can have so great a concern and interest in the prosperity and happiness of your Majesty and your government, as your two Houses of Parliament: And do therefore humbly pray, that, for the future, your Majesty would be graciously pleased to hearken to the advice of your Parliament, and not to the secret advices of particular persons, who may have private interests of their own, separate from the true interest of your Majesty and your people.

Resolved, That the said humble representation be presented to his Majesty by Mr. Speaker and the whole House.

Ordered, That such Members of this House that are of his Majesty's most honourable Privy Council, do humbly know his Majesty's pleasure when he will please to be attended by this House.

*January 31.*

Mr. Speaker reported to the House, That he did, upon Monday last, present to his Majesty their humble representation; and that his Majesty was pleased to answer in this manner; viz.

Gentlemen,

I will consider of your representation, and will give you a speedy answer: And I desire you to meet me here on Wednesday Morning at ten o'clock.

The House then went to attend the King at Whitehall; and being returned;

Mr. Speaker reported, That they having attended his Majesty,

“ ~~jeſty~~, his Majesty had been pleased to give an answer to their  
 “ ~~humble representation~~; and that his Majesty had been pleased  
 “ to deliver him the paper out of which his Majesty read the  
 “ same : Which Mr. Speaker read to the House ; and is as fol-  
 “ loweth : viz.

‘ Gentlemen,

‘ I am very sensible of the good affections you have expressed  
 ‘ to me upon many occasions, and of the zeal you have shewn for  
 ‘ our common interest : I shall make use of this opportunity to tell  
 ‘ you, that no Prince ever had a higher esteem for the constitu-  
 ‘ tion of the English government than myself ; and that I shall  
 ‘ ever have a great regard to the advice of Parliaments. I am  
 ‘ persuaded, that nothing can so much conduce to the happiness  
 ‘ and welfare of this kingdom, as an entire confidence between  
 ‘ the King and people, which I shall by all means endeavour to  
 ‘ preserve ; and, I assure you, I shall look upon such persons to be  
 ‘ my enemies, who shall advise any thing that may lessen it.’

“ Resolved, That this House will to-morrow morning, at eleven  
 “ o’clock, take into consideration his Majesty’s gracious answer.

*February 1.*

“ The House, according to the order of the day, proceeded to  
 “ take into consideration his Majesty’s gracious speech.

“ And the humble representation of the House, and also his  
 “ Majesty’s gracious answer, were read.

“ And the question being propounded, That an humble appli-  
 “ cation be made to his Majesty, for a further answer to the hum-  
 “ ble representation of this House ;

“ The previous question was put, that that question be now  
 “ put.

“ And it was resolved in the affirmative.

“ Then



“ Then the main question being put, That an humble applica-  
 “ tion be made to his Majesty, for a further answer to the humble  
 “ representation of this House ;

“ The House divided.

“ The Yeas go forth.

“ Tellers for the Yeas, { Colonel Granville, } 88.  
   { Mr. Harley;                }

“ Tellers for the Noes, { Mr. Wharton, } 229.  
   { Mr. Herbert;                }

“ So it passed in the negative.”

A P P E N D I X, N<sup>o</sup> 7. (p. 333.)

*Extract from Commons Journal, 16<sup>th</sup> December, 1641.*

**U**PON Mr. Pym's Reports from the Committee appointed to consider of the breach of Privilege of Parliament, by reason of his Majesty's speech to both Houses on Tuesday last; first, it was

“ Resolved, upon the question, That the Privilege of Parliament was broken, by his Majesty's taking notice of the Bill for pressing being in agitation in both Houses, and not agreed upon.

“ Resolved, upon the question, That the Privilege of Parliament is broken, that his Majesty should propound a limitation and provisional clause to be added to the Bill, before it was presented to him by consent of both Houses.

“ Resolved, upon the question, That the Privilege of Parliament is broken, in that his Majesty did express his displeasure against some persons, for matters moved or debated in Parliament during the debate and preparation of that Bill.

“ That a declaratory protestation shall be entered in this House, of the claim of these Privileges and Liberties; and that the Lords shall be moved, that the like declaratory protestation be entered in the Journals of their House.

“ That a petitionary remonstrance to his Majesty shall be prepared, declaring the right of Parliament to these Privileges, and the particulars wherein they have been broken; with an humble desire, that the like may not be done hereafter; and that his Majesty will be pleased to discover the parties by whose misformation and evil counsel his Majesty was induced to this breach

of Privilege, that so they may receive condign punishment for the same; and that it be desired, that his Majesty would take no notice of any particular man's speeches or carriage, concerning any matter treated in Parliament.

A declaratory protestation, and a petitionary remonstrance, to the effects above mentioned, were presented to the House, and read in hæc verba :

Whereas his Most Excellent Majesty did, upon Tuesday last, in full Parliament, in a speech to both Houses, take notice of a Bill for impressing soldiers being in agitation in the said Houses, and not agreed upon; and did offer a salvo jure, or provisional clause, to be added to the said Bill; and did at the same time declare his displeasure against some person or persons, which had moved some doubt or question concerning the same: The Lords and Commons do protest and declare, that his Majesty's speech is contrary to the fundamental, antient, and undoubted Liberty and Privilege of Parliament; and that it doth of right belong unto them, amongst other Privileges of the High Court of Parliament, that the King ought not to take notice of any matter in agitation or debate in either the Houses of Parliament, but by their information or agreement; and that his Majesty ought not to propound any condition, proviso, or limitation to any Bill or Act in debate or preparation in either House of Parliament; or to manifest or declare his consent or dissent, approbation or dislike of the same, before it be presented unto him by the consent of both Houses; and that every particular Member, of either House, hath free liberty of speech to propound or debate any matter according to the order and course of Parliament, and that his Majesty ought not to conceive displeasure against any man for such opinions and propositions as shall be delivered in such debate; it belonging to the several Houses of Parliament respectively to judge and determine such errors and offences, in words or actions, as shall be committed by any of  
 “ their

“ their Members, in handling or debating any matters there de-  
 “ pending. And, for the preservation of the said Privileges for  
 “ the time to come, they do ordain and appoint, that this their  
 “ protestation and declaration shall be entered in both Houses;  
 “ and that an humble remonstrance and petition shall be framed  
 “ and presented to his Majesty, in the name of both Houses, de-  
 “ claring this their antient and undoubted right; humbly desiring  
 “ his Majesty to observe and maintain the said Privileges; and  
 “ that he will not take notice of any particular man’s speeches or  
 “ carriage, concerning any matter in treaty and debate in Parlia-  
 “ ment, or conceive any offence or displeasure for the same; but  
 “ that he will discover, declare, and make known the name or  
 “ names of the person or persons, by whose misinformation and  
 “ evil counsel he was induced to the breach of the Privilege of  
 “ Parliament afore-mentioned.

‘ To the King’s Most Excellent Majesty :

‘ The humble Remonstrance and Petition of the Lords and Com-  
 ‘ mons in Parliament.

‘ Most Gracious Sovereign,

‘ Your Majesty’s most humble and loyal subjects, the Lords  
 ‘ and Commons in Parliament, do, with all faithfulness and zeal  
 ‘ to your Majesty’s service, acknowledge your royal favour and  
 ‘ protection to be a great blessing and security to them, for the  
 ‘ enjoying and preserving of all those public and private liberties  
 ‘ and privileges which belong unto them: and, whensoever  
 ‘ those liberties or privileges shall be invaded or broken, they hold  
 ‘ themselves bound, with humility and confidence, to trust to  
 ‘ your princely justice for redress and satisfaction. And, be-  
 ‘ cause their Rights and Privileges of Parliament are the birth-  
 ‘ right and inheritance not only of themselves but of the whole  
 ‘ kingdom, wherein every one of your subjects is entitled (the

7 maintenance and preservation whereof doth very highly con-  
 • duce to the public peace and prosperity of your Majesty, and  
 • all your people) they conceive themselves more especially obliged,  
 • with all tenderness and care, yea with all earnestness and con-  
 • stancy of resolution and endeavours, to maintain and defend the  
 • same.

• Amongst other the Privileges of Parliament, they do, with  
 • all dutiful reverence to your Most Excellent Majesty, declare,  
 • that it is their antient and undoubted right, that your Majesty  
 • ought not to take notice of any matter in agitation and debate in  
 • either of the Houses of Parliament, but by their information or  
 • agreement; and that your Majesty ought not to propound any  
 • condition, provision, or limitation, to any Bill or Act in debate  
 • or preparation in either House of Parliament, or to manifest or  
 • declare your consent or dissent, approbation or dislike of the  
 • same, before it be presented to your Majesty in due course of  
 • Parliament; and that every particular Member of either House  
 • hath free liberty of speech to propound or debate any matter  
 • according to the order and course of Parliament; and that your  
 • Majesty ought not to conceive displeasure against any man for such  
 • opinions and propositions as shall be in such debate; it belonging  
 • to the several Houses of Parliament respectively to judge and de-  
 • termine such errors and offences, which in words or actions shall  
 • be committed by any their Members, in the handling or de-  
 • bating any matters there depending. They do further declare,  
 • that all the Privileges above-mentioned have been lately broken  
 • to so great a grievance of your most humble and faithful subjects,  
 • in that speech which your Majesty made in Parliament to both  
 • Houses, upon Tuesday last, the 14th day of this instant Decem-  
 • ber, in that your Majesty did therein take notice of a Bill for  
 • impressing of soldiers being in agitation in the said Houses, and  
 • not agreed upon; and that your Majesty did therein offer a salvo  
 • jure, or provisional clause, to be added to that Bill, before it was  
 • presented

‘ presented to your Majesty by the consent of both Houses ; and  
‘ did, at the same time, declare your displeasure against such per-  
‘ son or persons, as had moved some doubt or question concerning  
‘ the same Bill : All which they do affirm and declare to be  
‘ against the antient, lawful, and undoubted Privilege and Liberty  
‘ of Parliament.

‘ And further they most humbly beseech your Majesty, by your  
‘ royal power and authority, to maintain and protect them in these  
‘ and other the Privileges of your High Court of Parliament ;  
‘ that you will not, for the time to come, break or interrupt the  
‘ same ; and that none of your loyal subjects may suffer and sus-  
‘ tain any prejudice in your Majesty’s favour, or good opinion, for  
‘ any thing done or spoken in Parliament : And, for the reparation  
‘ of your loyal subjects in this just grievance and complaint, for  
‘ the breaches of their Privileges above-mentioned, and preven-  
‘ tion of the like for the time to come, that your Majesty will be  
‘ pleased to declare and make known the name or names of the  
‘ person or persons by whose misinformation and evil counsel your  
‘ Majesty was induced to the same, that so he or they may receive  
‘ condign punishment, as shall appertain to justice in that be-  
‘ half. And this they most humbly desire, as your greatest and  
‘ most faithful Council, and advise your Majesty to perform, as  
‘ that which will be not only a comfort to themselves, but like-  
‘ wise a great advantage to your Majesty, by procuring and con-  
‘ firming such a confidence and unity betwixt your Majesty and  
‘ your people, as may be a foundation of honour, safety, and hap-  
‘ piness to your person and your throne, as they are bound always  
‘ to pray for and endeavour.’

*The Proceeding of the King's, to which this Remonstrance refers, appears from the following Extract from the Lords Journal, 14<sup>th</sup> December, 1641.*

“ The King's Majesty came this day to this House ; and,  
 “ being set in his chair of state, he commanded the House of  
 “ Commons to be sent for ; who being come with their  
 “ Speaker, the King made this speech to both Houses of Par-  
 “ liament :

‘ My Lords and Gentlemen,

‘ The last time I was in this place, and the last thing that I re-  
 ‘ commended unto you, was the business of Ireland, whereby I  
 ‘ was in good hope that I should not have needed again to have  
 ‘ put you in mind of that business ; but, still seeing the slow pro-  
 ‘ ceedings therein, and the daily dispatches that I have out of  
 ‘ Ireland of the lamentable state of my protestant subjects there,  
 ‘ I cannot but again earnestly recommend the dispatch of that ex-  
 ‘ pedition unto you ; for it is the chief business that at this time  
 ‘ I take to heart, and there cannot (almost) be any business that I  
 ‘ can have more care of. I might now take up some of your  
 ‘ time in expressing my detestation of rebellions in general, and of  
 ‘ this in particular ; but knowing that deeds, and not declarations,  
 ‘ must suppress this great insolency, I do here in a word offer you  
 ‘ whatsoever my power, pains, or industry can contribute to this  
 ‘ good and necessary work, of reducing the Irish nation to their  
 ‘ true and wonted obedience.

‘ And that nothing may be omitted on my part, I must here  
 ‘ take notice of the Bill for pressing of soldiers, now depending  
 ‘ among you, my Lords ; concerning which I here declare, that,  
 ‘ in

‘ in case it come so to me as it may not infringe or diminish my  
‘ Prerogative, I will pass it.

‘ And further, seeing there is a dispute raised (I being little  
‘ beholden to him whosoever at this time began it) concerning  
‘ the bounds of this antient and undoubted Prerogative, to avoid  
‘ further debate at this time, I offer that the Bill may pass, with  
‘ a salvo jure, both for King and people, leaving such debates to a  
‘ time that may better bear it. If this be not accepted, the fault  
‘ is not mine that this Bill pass not, but those that refuse so fair an  
‘ offer. To conclude, I conjure you, by all that is or can be dear  
‘ to you and me, that, laying away all disputes, you go on cheer-  
‘ fully and speedily for the reducing of Ireland.’

“ His Majesty, having ended his speech, departed, and the  
“ Commons went to their House.

“ And this House conceived that the fundamental Privileges of  
“ Parliament have been broken, by the King’s taking notice, in  
“ his speech this day, of the debate in this House of the Bill con-  
“ cerning pressing of soldiers.

“ A message was brought from the House of Commons, by  
“ Mr. Hollis,

“ To desire a conference, by Committees of both Houses, so  
“ soon as it may stand with their Lordships conveniency, touching  
“ a thing most precious to their Lordships and them, the Privileges  
“ of Parliament.

“ The answer hereunto returned was,

“ That this House will give them a present meeting in the  
“ Painted Chamber, as is desired.

“ The House was adjourned during pleasure, and the Lords  
“ went to the conference ; which being ended, the House was re-  
“ sumed ;



“ fumed; and the Lord Keeper reported the effect of the conference; videlicet,

‘ That the Privileges of Parliament have ever been placed in an high estimation with both Houses, and have been enjoyed with great affection, not only as an ornament, but as a right, to have free debate of matters in Parliament.

‘ The House of Commons say, that the occasion of this conference grows from somewhat that fell from the King this day in his speech in full Parliament: They say his presence is an acceptance of joy, and would be so, if it were not for misrepresentation of things acted and debated in Parliament, which is against the indemnity of the Lords and Commons, as 9 Henry IV.

‘ His Majesty took notice of a Bill for the pressing of soldiers being in agitation in the Houses, and not agreed upon, and did offer a salvo jure, or provisional clause, to be added to the said Bill, by way of limitation or restriction; and did also, at the same time, express his displeasure against some person or persons, which had moved some doubt or question concerning it; which the House of Commons declare to be a breach of the fundamental Privileges of Parliament.

‘ The House of Commons do therefore desire their Lordships would join with them in an humble petition to his Majesty, to take notice that the Privilege of Parliament is broken herein, and to desire him that it may not be done so any more hereafter.

## A P P E N D I X, N° 8. (p. 339.)

*Clause for ratifying and confirming the Letters Patent,  
granting the Barony of Lucas.*

**A**ND whereas his Majesty hath been graciously pleased, by his Letters Patents, under the Great Seal of England, bearing date since the beginning of this present session of Parliament, and out of his special grace and favour to the said Mary Countess of Kent, to create her Baroness Lucas, of Crudwell, and to grant that she shall hold the said barony, honour, title, and dignity, to her and the heirs males of her body begotten by the said Earl, and for want of such issue, to the heirs of her body by the said Earl begotten; and his Majesty hath, by his said letters patents, declared his will, pleasure, and intention to be, that if, at any time or times after the death of the said Mary Countess of Kent, and default of issue male of her body by the said Earl begotten, there shall be more persons than one who shall be coheirs of her body by the said Earl begotten, whereby the King's Majesty, his heirs or successors, might declare which of them he pleases to have and enjoy the said honour, title, and dignity, or might hold the same in suspense, or extinguish the same, at his and their pleasures; then nevertheless the said honour, title, and dignity shall not be held in suspense, or extinguished, but shall go to, and be held and enjoyed from time to time by such of the said coheirs, as by course of descent at the common law should be inheritable to other intire and indivisible inheritances, as namely an office of honour and public trust, or a castle for the necessary defence of the

realm, or the like, in case any such inheritance was given or limited to the said Mary, and the heirs of her body by the said Earl begotten, it being (as by the said letters patents it is further declared) his Majesty's express intent and meaning, that the said honour, title, and dignity shall and may remain and be from time to time to the said Mary Countess of Kent, and the heirs of her body by the said Earl begotten, in that course of succession as such other intire inheritances as aforesaid should descend by the common laws of the realm, in case the same had been given or limited to the said Mary Countess of Kent, and such heirs of her body as aforesaid : Be it further enacted, by the authority aforesaid, That the said declarative clause, in the said letters patents, shall be, and is hereby ratified and confirmed ; and that the said barony, honour, title, and dignity shall, from time to time, for ever hereafter, go to, and be held and enjoyed by, the said Mary Countess of Kent, and the heirs males of her body by the said Earl begotten ; and for want of such issue go to, and be held and enjoyed by, the heirs of her body by the said Earl begotten, in such manner, and in such course of succession or descent, as an office of honour and public trust, or a castle for the necessary defence of the realm, or such other intire and indivisible inheritance, should, according to the common laws of this realm, go, remain, or descend, in case the same were given or limited to the said Mary Countess of Kent, and the heirs male of her body by the said Earl begotten, and for want of such issue to the heirs of her body begotten by the said Earl ; and that when and so often as there shall be more persons than one who shall be coheirs of the body of the said Mary Countess of Kent by the said Earl begotten, the said barony, honour, title, and dignity shall not be held in suspense, or extinguished, but shall from time to time go to, and be enjoyed by, such one of the coheirs of the body of the said Mary Countess of Kent by the said Earl begotten, as by the common laws of this kingdom should

should have, take, or enjoy an office of honour and public trust, or a castle for the necessary defence of the realm, or such other intire inheritance not partible or divisible amongst coheirs, if limited or given to, or settled on, the said Mary, and the heirs of her body by the said Earl begotten; any law, usage, or custom to the contrary thereof in anywise notwithstanding.



# I N D E X

## T O T H E

### S E C O N D V O L U M E.

#### A.

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